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SECURITY AGAINST WAR

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TORONTO

SECURITY AGAINST WAR

BY

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AND

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Collaborator

VOLUME I

INTERNATIONAL CONTROVERSIES

New York

THE MACMILLAN COMPANY

1924

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Set up and electrotyped
Published October, 1924.

Printed in the United States of America by
THE FERRIS PRINTING COMPANY NEW YORK

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PUBLISHER'S NOTE

The author of this book has spent the greater part of the past four years in Europe, making a special study of port and transit conditions and of the Treaty foundations of peace; visiting twenty-one countries; crossing seven seas; and being on the scene of action during many of the controversies and wars herein narrated.

The collaborator possesses first-hand knowledge of the conditions in many countries, has had access to documents and information in the original text, and wide opportunity to verify and amplify the investigations herein described.

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PREFACE

The first epoch of reconstruction under the Peace Treaties is now ended and the record is available. This book contains the narrative of one aspect of that epoch—political reconstruction through the settlement of international disputes.

This record of deeds constitutes the solid foundation upon which peace rests; it offers a body of specific data from which to view intelligently the future prospects of national security; it indicates the competence of the machinery employed to maintain peace; and the measure of justice which has prevailed in the settlement of conflicts between sovereign states. Finally it portrays the relative values of force and law in the adjudication of international controversies.

Part I of this narrative contains a description of the peace machinery in theory and in practice. Part II relates the history of each dispute, together with the application of the peace machinery to its settlement. Part III presents the evolution and record of the Permanent Court of International Justice, together with its relation to the Hague Organization and Conferences, as being the effort to substitute law for war. Part IV analyzes the pending proposals for future peace, including disarmament, the treaties of mutual assistance and of disarmament and security and the outlawry of war. The record thus presented is one of fact and endeavor, containing information from all parts of the world, which will be of service to those desirous of forming their opinions upon a knowledge of the situation with reference to international controversies since the war.

With panaceas this book is not concerned. Some may wish to improve the League of Nations or abolish the Conference of Ambassadors or extend the powers of the Court. Others, less interested in organization, may favor treaties of assistance, disarmament, or the outlawry of war. Still others may revert to the Hague Conferences or the extension of the Monroe Doctrine, while many dream of new expedients against war. But unless these various movements possess the intelligence born of a knowledge of European conditions and of the character of its people, and are guided by the significance of the events since the war, they will have very little practical value in the abolition of war. Such knowledge is to be found in the history of these controversies; and in the principles and precedents thus established.

The second era of reconstruction under the Peace Treaties is at hand. It may be said to date from the change of administrations in France and in Great Britain, and with the settlement of the controversy over reparations and the Ruhr. It will be conspicuously inaugurated at the Fifth Assembly by the new leaders entrusted, among others, with fashioning its destinies.

Should there be a desire in the new leadership to right the wrongs which have appeared in these controversies; to restore arbitration to the high position held in 1907; to encourage respect for law and treaty agreements among the great as well as the small states; to recognize the Court in the matters which it is preeminently fitted to judge; and to reconstruct the foundations of peace upon just treaties, with practical machinery for enforcement, the history of the controversies since the war, and their settlement, offers an admirable field for research and analysis, and may well constitute a basis for measures against future wars.

To Americans, this narrative furnishes a precise knowledge and an examination of fundamental principles which touch very closely American theories of government and administrative practice; and, as such, it may furnish the groundwork for constructive criticism, without which no international policy can proceed wisely for this country or be of enduring benefit to other nations.

FRANCES KELLOR.

NEW YORK,
THREE UNIVERSITY PLACE.
SEPTEMBER, 1924.

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VOLUME I

INTERNATIONAL CONTROVERSIES

CHAPTER I

THE COVENANT AS A CHARTER OF PEACE

The Peace Conference of Paris bequeathed to the world a Covenant which purported to be a charter of peace, designed to prevent future wars.[1] The Covenant is Part I of the Treaties of Versailles, St. Germain, Neuilly and Trianon.[2] To Americans the Covenant has one supreme interest: Has it prevented war; has it achieved international security? If not, what progress has been made under its provisions; and what chance is there of its stopping wars?

It is logical and fair to seek the answers to these questions in the record of the practical application of the provisions of the Covenant to the controversial affairs of nations; for the Covenant is no longer a bare ideal, but has been through five years of hard experience. As the first epoch of its history draws to a close, it seems an appropriate time for a searching analysis of that record and for an examination of the circumstances which have transformed the Covenant from a vision into a reality. Such analysis is the substance of the following narrative.

THE PREAMBLE

The ideals of the Covenant are embodied in a Preamble, to which all states subscribe when they become High Contracting Parties. It reads as follows:

"The High Contracting Parties in order to promote international co-operation and to achieve international peace and security

by the acceptance of obligations not to resort to war,

by the prescription of open, just and honorable relations between nations,

by the firm establishment of the understandings of international law as the actual rule of conduct among Governments, and

by the maintenance of justice and a scrupulous respect for all treaty

[1] Text of *The Covenant*, Annex I.

[2] Current opinion in the United States and Europe does not agree with regard to the origin of the Covenant. In the United States it is popularly referred to as an American idea; but in Europe it is pointed out that there were five schemes before the Peace Conference and that the present Covenant represents a compromise between British elasticity and French definiteness, in which the British draft prevailed over the French design. *(A History of the Peace Conference of Paris*, Vol. VI, pp. 432-461; also "The League and the Old Diplomacy," by Alfred E. Zimmern, *Contemporary Review*, February, 1924; p. 156.)

obligations in the dealings of organized peoples with one another, agree to this Covenant of the League of Nations."

It will be observed that this Preamble does not contain a declaration of the rights and duties of nations in terms of law; there are only general rules of conduct, susceptible to various interpretations.[3]

Under this Preamble, fifty-four states have assumed obligations and acquired rights as High Contracting Parties.[4] They include victors and vanquished, highly civilized states and backward states, new republics and ancient monarchies, neighboring countries, and widely distant continents—all bound together in an agreement not to resort to war, to establish understandings of international law, and to conduct their international relations in an open, just and honorable way. The Preamble assumes that such countries have a common interest and a somewhat similar outlook, to reach common agreements on these matters.

Of these fifty-four states, two South American governments have

[3] Contrast this Preamble with the declaration of the rights of states, adopted at the first session of the American Institute of International Law, in 1916, stated in terms of law and supported by decisions of the United States Supreme Court. It reads as follows:

"I. Every nation has the right to exist, and to protect and to conserve its existence; but this right neither implies the right nor justifies the act of the state to protect itself or to conserve its existence by the commission of unlawful acts against innocent and unoffending states.

"II. Every nation has the right to independence in the sense that it has a right to the pursuit of happiness and is free to develop itself without interference or control from other states, provided that in so doing it does not interfere with or violate the rights of other states.

"III. Every nation is in law and before law the equal of every other nation, belonging to the society of nations, and all nations have the right to claim and, according to the Declaration of Independence of the United States, 'to assume, among the powers of the earth, the separate and equal station to which the laws of nature and of nature's God entitle them.'

"IV. Every nation has the right to territory within defined boundaries and to exercise exclusive jurisdiction over its territory, and all persons whether native or foreign, found therein.

"V. Every nation entitled to a right by the law of nations is entitled to have that right respected and protected by all other nations, for right and duty are correlative, and the right of one is the duty of all to observe." (*American Journal of Int. Law*, January, 1924; p. 118.)

[4] The following states are members:

Abyssinia, Albania, Argentina, Australia, Austria, Belgium, Bolivia, Brazil, British Empire, Bulgaria, Canada, Chile, China, Colombia, Costa Rica, Cuba, Czechoslovakia, Denmark, Esthonia, Finland, France, Greece, Guatemala, Haiti, Honduras, Hungary, India, Italy, Ireland, Japan, Latvia, Liberia, Lithuania, Luxemburg, Netherlands, New Zealand, Nicaragua, Norway, Panama, Paraguay, Persia, Peru, Poland, Portugal, Roumania, Salvador, Serb-Croat-Slovene State, Siam, South Africa, Spain, Sweden, Switzerland, Uruguay, Venezuela.

signified their intention of withdrawal.[5] Argentina states its reason to be the failure of the First Assembly to discuss amendments to the Covenant;[6] the reason attributed to Peru is the refusal of the United States to become a member.[7] Late press reports are to the effect that Argentina has recently forwarded her subscription, due to the League for the past several years; has sent a delegation to the International Labor Conference held in June, 1924; and is expected to resume her representation in the Fifth Assembly, sitting in September, 1924.

To complete the record, however, it should be noted that more than three hundred million people of the white race, belonging to great states, and equal in population to forty of the member states, have not subscribed to the Covenant. Of these states, Germany has not been permitted to join, due, it is said, to French opposition; the United States is not a member because President Wilson refused to accept the reservations proposed by the United States Senate, and that body would not accept the Treaty without reservations; Turkey has been at war; and the Russian delegation to the Genoa Conference gave as the reason for Russia's not becoming a member that [8] "the Russian Government is willing to participate in the general revision of the status of the League of Nations in order to convert the League into a real Union of Nations without domination of one nation over the others and with

[5] The conditions under which a state may withdraw are contained in paragraph 3 of Article 1 of the Covenant, reading as follows:

"Any member of the League may, after two years' notice of its intention so to do, withdraw from the League, provided that all its international obligations and all its obligations under this Covenant shall have been fulfilled at the time of its withdrawal."

This paragraph, as finally adopted, represents a defeat of the American point of view, as expressed by Mr. Wilson, by the British point of view, as expressed by Viscount Cecil, postulating permanent membership. Inasmuch as the League is the judge when a state has fulfilled all of its international obligations, the United States Senate proposed the following reservation as a condition of ratifying the Treaty of Versailles:

"The United States so understands and construes Article 1 that in case of notice of withdrawal from the League of Nations, as provided in said Article, the United States shall be the sole judge as to whether all its international obligations and all its obligations under the said Covenant have been fulfilled, and notice of withdrawal by the United States may be given by a concurrent resolution of the Congress of the United States." *(Congressional Record,* 66th Congress, 1st Session, Nov. 19th, 1919.) For another method of withdrawal from the League, see Article 26; p. 43.

[6] Chap. II; p. 45.

[7] *Third Year Book of the League of Nations,* edited by Dr. Levermore; p. 263.

[8] *Foreign Affairs* (British), March, 1924.

the elimination of the present existing division of conquerors and conquered." [9]

GUARANTEES AGAINST AGGRESSION

"Art. 10. The Members of the League undertake to respect and preserve as against external aggression the territorial integrity and existing political independence of all Members of the League. In case of any such aggression or in case of any threat or danger of such aggression the Council shall advise upon the means by which this obligation shall be fulfilled."

This article, which has attracted states to the Covenant, has also been the subject of bitter controversy. In the United States, the Senate was opposed to accepting it without amendment, and proposed a reservation which was rejected by Mr. Wilson.[10] One of the leading opponents of this article, as drafted, was Mr. Elihu Root.[11] At the First Assembly, the Canadian delegation demanded that Article 10 be stricken out of the Covenant. The Committee on Amendments to the Covenant was in favor of retaining the article and so reported to the Council, stating that Article 10 laid down a principle for the maintenance of political independence and territorial integrity against violence, not provided for in any other article of the Covenant.[12] An interpretative resolution was proposed by the First Committee of the Second Assembly, but such were the differences of opinion that the examination of the proposal had to be postponed. The Canadian delegation pointed out that Article 10 was not in need of "interpretation,"

[9] Other non-member states are: Afghanistan, Dominican Republic, Ecuador, the Hedjaz, Iceland, Thibet and Mexico.

[10] The following reservation was proposed in 1919 in the United States Senate, as a condition of ratification of the Treaty of Versailles:

"The United States assumes no obligation to preserve the territorial integrity or political independence of any other country or to interfere in controversies between nations—whether Members of the League or not—under the provisions of Article 10, or to employ the military or naval forces of the United States under any article of the Treaty for any purpose, unless in any particular case the Congress, which, under the Constitution, has the sole power to declare war or authorize the employment of the military or naval forces of the United States, shall by act or joint resolution so provide." *(Congressional Record,* 66th Congress, 1st Session, Nov. 19th, 1919.)

[11] "It is not an essential or even an appropriate part of the provisions for a League of Nations to preserve peace. It is an independent and indefinite alliance which may involve the parties to it in war against powers which have in every respect complied with the provisions of the League of Peace. It was not included in General Smuts' plan, the provisions of which have been reproduced almost textually in the League Covenant. It stands upon its own footing as an independent alliance for the preservation of the *status quo.*" (Letter to Senator Lodge from Mr. Root, *Congressional Record,* 66th Congress, 1st Session, June 23rd, 1919.)

[12] *Records of the Second Assembly;* pp. 693-695.

but of amendment.[13] At the Third Assembly, the Canadian delegation proposed an amendment, the consideration of which was again postponed. But a compromise was reached at the Fourth Assembly, when the idea of an interpretative resolution was revived and substituted for an amendment. This time the Canadian delegation accepted and Article 10 was interpreted in the following manner:[14]

"It is in conformity with the spirit of Article 10 that, in the event of the Council considering it to be its duty to recommend the application of military measures in consequence of an aggression or danger or threat of aggression, the Council shall be bound to take account, more particularly, of the geographical situation and of the special conditions of each State.

"It is for the constitutional authorities of each Member to decide, in reference to the obligation of preserving the independence and the integrity of the territory of Members, in what degree the Member is bound to assure the execution of this obligation by employment of its military forces.

"The recommendation made by the Council shall be regarded as being of the highest importance, and shall be taken into consideration by all Members of the League with the desire to execute their engagements in good faith."

Under this interpretative resolution, the Council, in recommending the use of a military force, is to take into consideration the geographical situation and the special conditions in each state; and there is reserved to the constitutional authorities of a member state the right to determine the degree of military obligation it will assume.[15] In good faith, however, such a state is expected to assist other member states.

This resolution did not receive the unanimous approval of the Assembly, Persia having voted against it on the ground that it was not interpretative, but constituted an amendment. Among important states which did not vote were Czechoslovakia, Poland and Lithuania. The precise status of this resolution is not fixed. The President of the Assembly, in announcing the result, said:[16] "I shall not declare the motion rejected, because it cannot be argued that, in voting as it has done, the Assembly has pronounced in favor of the converse interpretation. I, accordingly, declare the proposal not adopted." He then suggested that the names of the members who voted for the proposal be communicated to the Council "which may regard the result as important." Whether the Council is bound to take into considera-

[13] *Records of the Second Assembly, Committees, Vol. I;* pp. 107-113.

[14] *Verbatim Record of the Fourth Assembly,* Thirteenth Meeting; p. 8.

[15] It should be noted that this reservation refers only to military measures and does not include economic measures, such as blockades, or financial assistance.

[16] *Verbatim Record of the Fourth Assembly,* Thirteenth Meeting; p. 9.

tion this resolution in relation to a state which voted for it and to ignore it in relation to states which refrained from voting, remains to be determined. Whether new members of the League will be bound by the provisions of Article 10, uninterpreted, is also a question.[17]

During the life of Article 10 there have been eight aggressions of the territory of member states as follows:[18] (1) Bombardment by Russian warships of the port of Enzeli in Persia; (2) Hungarian invasion of the Burgenland and Austrian territory; (3) Yugo-Slav invasion of Albanian territory; (4) Greek invasion of Albanian territory; (5) Polish conquest of Vilna in Lithuanian territory; (6) Italian bombardment of Corfu in Greek territory; (7) Lithuanian conquest of Memel in the territory of the Allied Powers; and (8) Russian invasion of Polish territory. In no instance was action taken by the Council under Article 10 although Persia, Austria, Albania, Lithuania, and Greece brought the matter to the attention of the League.[19]

In seven of these instances the aggressed states were small, and all issues were before the League, but no member state was ready to undertake obligations under Article 10. Great Britain, however, assisted Persia; the Allied Powers assisted Austria; the Conference of Ambassadors saved Albania and Corfu.[20] It is apparent that Article 10 received no support from the Allied Powers although they were willing to act on their own behalf in the interests of smaller states—a practice of pre-war days. It is also apparent that if the Principal Allied Powers do not elect to prevent aggression through Article 10, but prefer to act separately through their own foreign offices, the article will remain impotent.[21]

[17] The ambiguity of Article 10 is such that it was possible for Mr. Wilson to refer to it upon one occasion as follows: "Article 10 seems to me to constitute the very backbone of the whole Covenant; without it the League would be hardly more than an influential debating society." *(A History of the Peace Conference of Paris,* Vol. VI; p. 445.) And on another occasion he stated that it constituted only a moral, not a legal obligation, and "leaves our Congress absolutely free to put its own interpretation upon it in all cases that call for action" *(ibid.)*. These statements are not inconsistent; Article 10 is the backbone of the Covenant and states have put upon it precisely the interpretation which Mr. Wilson assured Congress would be the fact.

[18] For details of each controversy, consult the various following chapters.

[19] For table of disputes, see p. 36.

[20] In the Russian aggression of Poland, the Allied Powers supplied the assistance outside the League which they were unwilling to give under Article 10.

[21] The Treaty of Mutual Assistance, submitted to the Fourth Assembly and now before member states for consideration, is a public acknowledgment of the impotence of Article 10, and is designed to remedy its defects (Chap. XXXVII). But as the same states which have ignored Article 10 are to be responsible for the new treaty, what greater assurance does it carry for security unless the will to honor it prevails?

ACTION IN CASE OF WAR OR THREAT OF WAR

"Art. 11. Any war or threat of war, whether immediately affecting any of the Members of the League or not, is hereby declared a matter of concern to the whole League, and the League shall take any action that may be deemed wise and effectual to safeguard the peace of the nations. In case any such emergency should arise the Secretary-General shall on the request of any Member of the League forthwith summon a meeting of the Council.

"It is also declared to be the friendly right of each Member of the League to bring to the attention of the Assembly or of the Council any circumstance whatever affecting international relations which threatens to disturb international peace or the good understanding between nations upon which peace depends."

In theory, the first paragraph provides that the whole League must make war against an offending member, if the Council so decides, inasmuch as the offense of one member against another is an offense against all. The second paragraph was intended to encourage states to report disputes affecting fellow members by declaring that such act will be regarded as friendly. Furthermore, in that process, states engaged in such disputes need not be accused of making war or threatening war, but only of disturbing international peace or good understanding. The disputes submitted to the Council under this article include the following:[22] In 1920, Persia in a dispute with Russia; and the British Government in the case of the Aaland Islands. In 1921, Albania in disputes with Yugo-Slavia and Greece; the Supreme Council in the Upper Silesian controversy; and the Austrian Government in a dispute with Hungary. In 1922, the Finnish Government on the Eastern Carelian question; and the Bulgarian Government in a dispute with states bordering on Bulgaria. In 1923, the Hungarian Government, in the matter of the expropriation by the Roumanian Government of the immovable property of Hungarian nationals; the Bulgarian Government in the matter of Bulgarians in Western Thrace; the Conference of Ambassadors on the question of Memel; the Conference of Ambassadors in the Czechoslovak-Polish controversy over Jaworzina; and the British Government on a question concerning the Turkish-Iraq frontier.

There is one instance where a member state, not a party, has submitted a dispute involving others, namely, in the Aaland Island case, submitted by Great Britain; but with the consent of Sweden and Finland. In this instance, Great Britain had a direct interest, as the question involved the freedom of the seas.

[22] For details of each controversy, consult the various chapters.

An authoritative interpretation of this article was given by the Secretary-General in an instance where the League refused to act. On November 13, 1921, the Hungarian Government sent a protest to the League of Nations, calling attention to the threat of war which the Little Entente had made against Hungary on the occasion of the attempted return of ex-King Charles IV. It called attention to Article 11, declaring any war or threat of war to be a matter of concern to the League, and to Article 17, empowering the League to invite non-member states to submit such disputes. The Hungarian Government stated that it had received no information "as to the steps taken by the League of Nations to safeguard the peace and safety of nations." To a repeated protest, the Secretary-General replied, interpreting Article 11 as follows:[23]

"Article 11 of the Covenant, which is referred to in the first note from the Hungarian Government, dated November 13th, establishes the means by which a question, such as that in which you were interested, should be brought before the Council; it states that there must first be made a request by a Member of the League, and the Secretary-General has then to convene the Council immediately, in pursuance of this request. If the question at issue is in the nature of a dispute, it is evident that one of the parties to this dispute may bring the matter before the Council, provided that the party is a Member of the League. This course, however, will not be open to a party which is not a Member of the League. Such a state could only inform the Members of the League, either directly or through the Secretary-General, of the situation which, in its opinion, threatens the peace of the world, and thus give occasion for a request by one of the Members of the League for the convening of the Council."

This interpretation, however, seems to be at variance with the action taken in the Panama-Costa Rica dispute at about the same time, when the Council sent a cablegram to these two parties calling their attention to their obligations under the Covenant. This action was based upon press reports of the conflict and not upon any formal request by a member of the League.[24]

Member states have given Article 11 a fair trial as a method of settling disputes and it has been the mainstay of the arbitral system established under the Covenant.[25]

ARBITRATION OF DISPUTES

Art. 12. "The Members of the League agree that if there should arise between them any dispute likely to lead to a rupture, they will submit

[23] *League of Nations Official Journal,* February, 1922; p. 132.

[24] Chap. XX; p. 383.

[25] For details of the disputes, consult the various chapters. See table of disputes and settlements; p. 36.

the matter either to arbitration or to inquiry by the Council, and they agree in no case to resort to war until three months after the award by the arbitrators or the report by the Council.

"In any case under this Article the award of the arbitrators shall be made within a reasonable time, and the report of the Council shall be made within six months after the submission of the dispute."

In theory, this article is the keystone of the arbitral structure of the Covenant, providing, as it does, for the submission of *any* dispute likely to lead to rupture. It conveys, however, an appearance of international solidarity while avoiding the reality, as its theory is based upon the principle of delay, not action. But Article 13 should be read in connection with this article, inasmuch as it provides for a number of exceptions:[26]

Art. 13. "The Members of the League agree that whenever any dispute shall arise between them which they recognize to be suitable for submission to arbitration and which cannot be satisfactorily settled by diplomacy they will submit the whole subject-matter to arbitration.

"Disputes as to the interpretation of a treaty, as to any question of international law, as to the existence of any fact which if established would constitute a breach of any international obligation, or as to the extent and nature of the reparation to be made for any such breach, are declared to be among those which are generally suitable for submission to arbitration.

"For the consideration of any such dispute the court of arbitration to which the case is referred shall be the Court agreed on by the parties to the dispute or stipulated in any convention existing between them.

"The Members of the League agree that they will carry out in full good faith any award that may be rendered, and that they will not resort to war against a Member of the League which complies therewith. In the event of any failure to carry out such an award, the Council shall propose what steps should be taken to give effect thereto."

Under this article, whenever a state alleges that its dispute is not likely to lead to rupture;[27] or deems it not to be suitable for arbitration; or asserts that it can be satisfactorily settled by diplomacy, it

[26] Amendments proposed to Articles 12 and 13 do not change the character of these articles. They are as follows: Insertion of the words "or the judicial decision" after the words "arbitrators" and "arbitration" in paragraph 1 of Articles 12 and 13; and a new paragraph added to Article 13, reading as follows:

"For the consideration of any such dispute, the Court to which the case is referred shall be the Permanent Court of International Justice, established in accordance with Article 14, or any tribunal agreed on by the parties to the dispute or stipulated in any convention existing between them."

[27] An example of this possibility was afforded in 1922, in the dispute of Bulgaria with its neighbor states. They had sent Bulgaria a threatening note; but when Bulgaria appealed to the Council, Roumania, Greece and Yugo-Slavia stated that there was no dispute likely to lead to a rupture and therefore intervention by the Council was not warranted. The matter, therefore, was left to direct negotiations between Yugo-Slavia and Bulgaria. Chap. XVI; p. 326.

may withhold the submission of its dispute.[28] Also, when the dispute falls within the enumerated classes, the state may interpret the meaning of the word "generally" and thus escape the provisions of paragraph 2.[29]

At the session of the Second Assembly in 1921, the Norwegian, Swedish and Danish delegations sought to have Article 13 amended by the omission of the word "generally," in order to render more precise and absolute the submission of this particular class of disputes. But the sub-commission did not recommend the adoption of the amendment, on the ground that it was contrary to the spirit of the Covenant which was opposed to compulsory arbitration of any dispute; and that Article 36 of the Statute of the Permanent Court provided a form of optional compulsory submission of the identical disputes which were specified in Article 13.[30]

Because of these exemptions, the Council declined to act in the Eastern Galician, Albanian, Austro-Hungarian and Italo-Greek controversies submitted to it by one of the parties, on the ground that the controversy was in process of diplomatic settlement before the Allied Powers. In each instance its competence was challenged by the other party or by an Allied Power and it was powerless to act. In the aggressions of Fiume by Italy; of the Ruhr by France; of Turkey by Greece; of Russia by Poland; of Eastern Galicia by Poland; in the rupture between Panama and Costa Rica; and between Czechoslovakia and Poland over Teschen; where military forces were engaged, no member states resorted to the League for the settlement of the disputes under Article 12.

Notwithstanding these ruptures, reference has been made to these articles in but two instances. The first time occurred in the Franco-British controversy over the Nationality Decrees in Tunis and Morocco, when Great Britain invoked Article 13 and France evaded it by resorting to paragraph 8 of Article 15; and a second time during the progress

[28] Other exemptions are to be found under paragraph 8 of Article 15, when a party to the dispute claims that it is domestic; and under Article 21, when a party claims that the matter concerns an international engagement or regional understanding.

[29] On this point, Baron Descamps, President of the Committee of Jurists which drafted the Court Statute for the League Council, said:

"The list of cases which can generally be considered susceptible to settlement by arbitration was identically the same as that mentioned in a letter dated March 29th, 1919, addressed by the Hon. Elihu Root to the President of the National Republican Committee. But the tendency of the two lists is entirely different owing to the addition of the word 'generally.'" *(Perm. Ct. of Int. Just., Advisory Committee of Jurists, Proceedings of the Committee;* p. 18.)

[30] *Records of the Second Assembly;* p. 697.

of the Italo-Greek dispute, when Viscount Cecil had Article 13 read into the record where it was temporarily obscured by debate.[31]

In practice, therefore, the exceptions have proved effective in preventing the Council from exercising its functions as an arbitral tribunal under these two articles.[32]

It has been stated, by reason of the fact that Article 12 requires a state to wait three months after the award of the Council before resorting to war, that it "outlaws war" through delay. Whatever the theory, no affirmative action of any kind ever having been taken under this article, its usefulness at the end of five years is entirely a question of the future, especially in view of the fact that during that time there were seven instances in which resort was had to military force, in which a member state was the object of aggression; seven instances in which a member state was an aggressor upon the territory of another country; and on four occasions territory temporarily ceded to the Allied Powers was the object of aggression.

DISPUTES SUBMITTED TO INQUIRY

"Art. 15. If there should arise between Members of the League any dispute likely to lead to a rupture, which is not submitted to arbitration

[31] When the adoption of Article 13 was under consideration, Mr. Root suggested an amendment, which, had it been adopted, would have constituted a court of arbitral justice (and not the parties) the judge as to whether the dispute was justiciable, as follows:

"The high contracting powers agree to refer to the existing Permanent Court of Arbitration at The Hague, or to the Court of Arbitral Justice proposed at the Second Hague Conference, when established, or to some other arbitral tribunal, all disputes between them (including those affecting honor and vital interests) which are of a justiciable character and which the powers concerned have failed to settle by diplomatic methods. The powers, so referring to arbitration, agree to accept and give effect to the awards of the tribunal.

"Disputes of a justiciable character are defined as disputes as to the interpretation of a treaty, as to any question of international law, as to the existence of any fact, which, if established, would constitute a breach of any international obligation or as to the nature and extent of the reparation to be demanded for any such breach.

"Any question which may arise as to whether a dispute is of a justiciable character is to be referred for decision to the Court of Arbitral Justice, when constituted, or, until it is constituted, to the existing Permanent Court of Arbitration at The Hague." *(Congressional Record,* 66th Congress, 1st Session, June 23rd, 1919.)

[32] The nearest approach to arbitral procedure was under Article 11, in the Aaland Islands case, where the Council received reports from a Committee of Jurists and a Commission of *Rapporteurs*, and in the instance of Memel, where it appointed a commission to make recommendations. This procedure should not, however, be confounded with that of arbitral procedure, as practiced by the Permanent Court of Arbitration.

in accordance with Article 13, the Members of the League agree that they will submit the matter to the Council. Any party to the dispute may effect such submission by giving notice of the existence of the dispute to the Secretary-General, who will make all necessary arrangements for a full investigation and consideration thereof.

"For this purpose the parties to the dispute will communicate to the Secretary-General, as promptly as possible, statements of their case with all the relevant facts and papers, and the council may forthwith direct the publication thereof.

"The Council shall endeavor to effect a settlement of the dispute, and if such efforts are successful, a statement shall be made public giving such facts and explanations regarding the dispute and the terms of settlement thereof as the Council may deem appropriate.

"If the dispute is not thus settled, the Council either unanimously or by a majority vote shall make and publish a report containing a statement of the facts of the dispute and the recommendations which are deemed just and proper in regard thereto.

"Any Member of the League represented on the Council may make public a statement of the facts of the dispute and of its conclusions regarding the same.

"If a report by the Council is unanimously agreed to by the members thereof other than the representatives of one or more of the parties to the dispute, the Members of the League agree that they will not go to war with any party to the dispute which complies with the recommendations of the report.

"If the Council fails to reach a report which is unanimously agreed to by the members thereof, other than the representatives of one or more of the parties to the dispute, the Members of the League reserve to themselves the right to take such action as they shall consider necessary for the maintenance of right and justice.

"If the dispute between the parties is claimed by one of them, and is found by the Council to arise out of a matter which by international law is solely within the domestic jurisdiction of that party, the Council shall so report, and shall make no recommendation as to its settlement.[33]

"The Council may in any case under this Article refer the dispute to the Assembly. The dispute shall be so referred at the request of either party to the dispute, provided that such request be made within fourteen days after the submission of the dispute to the Council.

[33] The following reservation was proposed by the United States Senate, as a condition for ratifying the Treaty:

"The United States reserves to itself exclusively the right to decide what questions are within its domestic jurisdiction and declares that all domestic and political questions relating wholly or in part to its internal affairs, including immigration, labor, coastwise traffic, the tariff, commerce, the suppression of traffic in women and children and in opium and other dangerous drugs, and all other domestic questions, are solely within the jurisdiction of the United States and are not under this Treaty to be submitted in any way either to arbitration or to the consideration of the Council or of the Assembly of the League of Nations or any agency thereof, or to the decision or recommendation of any other power." *(Congressional Record,* 66th Congress, 1st Session, Nov. 19th, 1919.)

"In any case referred to the Assembly, all the provisions of this Article and of Article 12 relating to the action and powers of the Council shall apply to the action and powers of the Assembly, provided that a report made by the Assembly, if concurred in by the representatives of those Members of the League represented on the Council and of a majority of the other Members of the League, exclusive in each case of the representatives of the parties to the dispute, shall have the same force as a report by the Council concurred in by all the Members thereof other than the representatives of one or more of the parties to the dispute." [34]

Article 15 was intended to close the loopholes of escape from arbitration in Articles 12 and 13, by permitting the Council to make an inquiry upon the complaint of any party to the dispute. On the face of it, this article should have played a large part in the settlement of disputes. But apparently it has not done so, as the only record of any dispute submitted under it was in the matter of Peru and Chile before the First Assembly.[35] There is one other mention of the article, namely, when Viscount Cecil had it read into the record during the Italo-Greek dispute in September, 1923. The ensuing dramatic revelation of impotence led the Council to appoint a Commission of Jurists for the purpose of interpreting the article. The report of the Commission was as follows:[36]

"(1) The Council, when seized at the instance of a Member of the League of Nations of a dispute submitted, in accordance with the terms of Article 15 of the Covenant, by such a member as 'likely to lead to a rupture,' is not bound, either at the request of the other party, or on its own authority, and before inquiring into any point, to decide whether, in fact, such description is well founded. The Council may at all times estimate the gravity of the dispute and determine the course of its action accordingly.

"(2) Where, contrary to the terms of Article 15, paragraph 1, a dispute is submitted to the Council on the application of one of the parties, where such a dispute already forms the subject of arbitration or of judicial proceedings, the Council must refuse to consider the application. If the matter in dispute, by an agreement between the parties, has already been submitted to other jurisdiction before which it is being regularly proceeded with, or is being dealt with in the said manner in another channel, it is in conformity with the general principles of law that it should be possible for a reference back to such jurisdiction to be asked for and ordered.

"(3) Where a dispute likely to lead to a rupture is submitted to the Council, on the application of one of the parties, in accordance with the provisions of Article 15, paragraph 1, the case contemplated in paragraph 8 of Article 15 is the only case in which the Council is not to inquire into the dispute. In particular the reservations commonly inserted in most

[34] The Second Assembly approved of an amendment to Article 15 to the effect that the words "or judicial settlement" should be inserted in the first paragraph.

[35] Chap. XX; p. 380

[36] *Monthly Summary of the League of Nations,* March, 1924; p. 53.

arbitration treaties cannot be pleaded as a bar to the proceedings. The Commission considers it desirable to observe that, where the case arises, the Council should, in determining the course of its action, have regard to international engagements such as treaties of arbitration, or regional understandings, for securing the maintenance of peace.

"(4) Coercive measures which are not intended to constitute acts of war may or may not be consistent with the provisions of Articles 12 to 15 of the Covenant, and it is for the Council, when the dispute has been submitted to it, to decide immediately, having due regard to all the circumstances of the case and to the nature of the measures adopted, whether it should recommend the maintenance or the withdrawal of such measures." [37]

In brief, this opinion holds: That when the Council considers a dispute at the instance of a member it need not decide whether in fact a threatened rupture exists; but it may estimate the gravity of the dispute and determine the course of its action accordingly.[38] This transfers from member states to the Council the decision whether a rupture exists, and constitutes an amendment to the Covenant.[39] (2) When, however, such dispute is the subject of arbitration or judicial proceedings or is before another body, the Council will not act. This leaves open the door by which Italy escaped from the League in Geneva to the Conference in Paris, and does not close the loopholes of arbitration, judicial proceedings or diplomacy. The states apparently remain the judges of the character of these proceedings. (3) The only exception to a question which the Council may examine is an international question under paragraph 8 of Article 15. (4) What constitute coercive measures, not intended to constitute acts of war, is left to the Council to decide when a dispute is submitted; but no rules of guidance are laid down to govern its recommendation. It may apparently decide a legal question on political grounds, setting at naught rules of law if there be any applicable.

INTERNATIONAL VS. DOMESTIC QUESTIONS

Paragraph 8 of Article 15 authorizes the Council to decide whether a question submitted to it is domestic or international. This exemption has been resorted to in three instances. In the first instance, Great Britain invoked Article 13 in the submission of its dispute with France over the Nationalities Decrees in Tunis and Morocco. France declined to arbitrate under Article 13, but consented to an inquiry under Article 15 for the purpose of challenging the competence of the League under

[37] Chap. IX; p. 229, for text of first four questions; and Chap. XXXIII for text and answer to fifth question.

[38] Chap. IX; p 233, for statement of Signor Salandra.

[39] See Article 16; p. 16.

paragraph 8, on the ground that the issue was domestic and not international. Both parties then agreed to remove the question of the competence of the Council from its jurisdiction by requesting that it obtain an advisory opinion from the Court.[40] In the second instance, Great Britain invoked Article 11 in the Aaland Islands dispute, whereupon Finland raised the question of the competence of the League, alleging that the question was domestic.[41] In the third instance, Finland invoked Articles 11 and 17 in the Eastern Carelian dispute, whereupon Russia contested the competence of the League on the ground that the question was domestic.[42]

In the three instances, therefore, where the question was raised, France sought to escape Article 13 through paragraph 8 and failed; Finland sought to escape from Article 11 and failed, but won the decision that the controversy was in effect domestic; and Russia escaped altogether because it was a non-member state.

COMMISSIONS TO SUPPLEMENT ARTICLES 12, 13 AND 15

Certain members of the League, from the first, were doubtful of obtaining the settlement of disputes under these articles. Among them were the Swedish and Norwegian Governments, which sought to facilitate pacific settlements through the establishment of permanent commissions of arbitration and conciliation for the investigation of disputes between members, the theory being that within a smaller body members might be willing to resort to arbitration. The Scandinavian representatives, therefore, proposed an annex to the Covenant, embodying this idea. The Second Assembly did not adopt this proposal;[43] but the Council, in January, 1922, appointed a commission under the chairmanship of M. Adatci to study the proposition. The report of the Commission as amended by the Council and by the First Committee of the Third Assembly, consisted of a resolution and nine articles containing rules of procedure. The resolution was adopted by the Third Assembly, on September 22nd, 1922, and recommended that members of the League, subject to their obligations under Article 15, may conclude conventions with the object of laying their disputes before conciliation commissions, formed by themselves. The organization and procedure of these commissions are to be determined by the parties and they are recommended to look for guidance to the Hague Convention of 1907 with regard to such matters as hearing witnesses, and employment of experts. At the request of the members concerned,

[40] Chap. XXVIII. [41] Chap. XIII; p. 284. [42] Chap. XXIX.
[43] *Records of the Second Assembly;* p. 825.

they may have the assistance of the Secretariat of the League. The Council may have recourse to the service of these commissions in that "it may invite them [states] to bring their disputes before the Commission or it may refer to the Commission any dispute which may have been submitted to it by one of the parties, by virtue of Article 15 of the Covenant." A conciliation convention, concluded between two states, of which only one is a member of the League, will be applicable, subject to Article 17 of the Covenant.[44]

This undertaking to supplement Articles 12, 13 and 15 has failed in practice, for the record indicates that no such commissions have functioned under this resolution.[45]

SANCTIONS IN ARTICLE 16

"Art. 16. Should any Member of the League resort to war in disregard of its covenants under Articles 12, 13 or 15, it shall *ipso facto* be deemed to have committed an act of war against all other Members of the League, which hereby undertake immediately to subject it to the severance of all trade or financial relations, the prohibition of all intercourse between their nationals and the nationals of the covenant-breaking state, and the prevention of all financial, commercial or personal intercourse between the nationals of the covenant-breaking state and the nationals of any other state, whether a Member of the League or not.

"It shall be the duty of the Council in such case to recommend to the several Governments concerned, what effective military, naval or air force the Members of the League shall severally contribute to the armed forces to be used to protect the covenants of the League.

"The Members of the League agree, further, that they will mutually support one another in the financial and economic measures which are taken under this Article in order to minimize the loss and inconvenience resulting from the above measures and they will mutually support one another in resisting any special measures aimed at one of their number by the covenant-breaking State, and that they will take the necessary steps to afford passage through their territory to the forces of any of the Members of the League which are cooperating to protect the covenants of the League.

"Any Member of the League which has violated any covenant of the League may be declared to be no longer a Member of the League by a

[44] *Records of the Third Assembly,* Vol. I, p. 199.

[45] The tendency to create new machinery rather than to strengthen the provisions of the Covenant by amendment is observable. Articles 8 and 10 are to be supplemented by a Treaty of Mutual Assistance which forms no part of the Covenant. Articles 12 and 15 were to be made more effective by conciliatory commissions, nowhere authorized in the Covenant; Article 16 has been the subject of nineteen interpretative resolutions and four amendments, none of them having been applied or ratified, and resort is now had to a Treaty of Mutual Assistance to give life to that article.

vote of the Council concurred in by the representatives of all the other Members of the League represented thereon." [46]

This article provides penalties in the event that a member resorts to war in disregard of Articles 12, 13 and 15. (1) There are two economic penalties, as follows: The severance of trade and economic relations by member states and the prohibition of intercourse between nationals of member states and the offending state. These penalties are to be applied by member states upon their own initiative in such degree and by such methods as they may determine. (2) The military penalties are to be applied only upon recommendation of the Council, but under what direction the military forces contributed are to act does not appear. (3) The offending state may lose its membership in the League by a unanimous vote of the Council. (4) In the event of economic and financial measures being applied, member states undertake to equalize the loss and inconvenience; in the event of the application of military measures, member states agree to permit the forces of any cooperating state to pass through their territory.[47]

The ambiguity of these sanctions raised four important questions: (1) Under what conditions should sanctions be applied? (2) Whose duty is it to decide when the necessity for applying the sanctions has arisen? (3) At what moment and by whom should these measures be applied? (4) How should they be applied?

THE INTERNATIONAL BLOCKADE COMMISSION INTERPRETS SANCTIONS

The Council lost no time in grappling with these questions. At its eighth meeting, held in August, 1920, a report was presented, dealing with preparatory measures to render Article 16 effective. The Council decided to place the question on the agenda of the First Assembly and to recommend the appointment of an International Blockade Commission, composed of an equal number of members representing the Council and Assembly. This suggestion was not put into effect; instead, the First Assembly passed a resolution, requesting the Council to

[46] This article met with opposition in the United States, and when the question of ratification of the Treaty was before the Senate the following reservation was proposed:

"The United States reserves the right to permit, in its discretion, the nationals of a covenant-breaking State, as defined in Article 16 of the Covenant of the League of Nations, residing within the United States or in countries other than that violating said Article 16, to continue their commercial, financial and personal relations with the nationals of the United States." *(Congressional Record,* 66th Congress, 1st Session, Nov. 19th, 1919.)

[47] Switzerland became a member, reserving this right, which it exercised when the League raised an international police force during the Polish-Lithuanian dispute (Chap. XI; p. 254).

appoint such a Commission to report to the next Assembly, and recommending that it should not exceed eight in number, should have power to summon experts to advise it, and that not less than half of the members should represent states which have not the right of permanent membership on the Council.[48]

On February 22nd, 1921, the Council adopted a resolution by which it created a Blockade Commission, consisting of representatives of France, Great Britain, Japan, Italy, Cuba, Spain, Norway and Switzerland. It was in session from August 22nd-29th, 1921, and at the end of the month submitted a report to the Council. This report was discussed by the Third Committee of the Second Assembly, which recommended two procedures; the first being a proposal to adopt a series of interpretative resolutions which would serve as a guide in the application of the article, and the second being four amendments to the article itself. In accordance with the first procedure, the following recommendations were adopted on September 27th, 1921:

I. *Under what conditions should sanctions be applied?* The Committee recommended, and the Assembly passed, the following two resolutions:[49]

"Subject to the special provisions of Article 17, the economic measures referred to in Article 16 shall be applicable only in the specific case referred to in this article."

"The unilateral action of the defaulting State cannot create a state of war; it merely entitles the other Members of the League to resort to acts of war or to declare themselves in a state of war with the Covenant-breaking State; but it is in accordance with the spirit of the Covenant that the League of Nations should attempt, at least at the outset, to avoid war, and to restore peace by economic pressure."

In proposing the first resolution, the Committee had in mind its application: (1) To a state which, without having submitted its dispute to arbitration or inquiry, resorts to war; (2) to a state which, without waiting three months after the award of the arbitration, resorts to war; (3) to a state which resorts to war against a state which complies with the award; (4) to a state which resorts to war against a member of the League which shall have accepted a report, concurred in by all the members of the Council, and a majority of the Assembly, under conditions laid down in paragraph 10 of Article 15; and (5) to states under the first and third paragraphs of Article 17, relating to non-member states.

But in the second resolution, the Committee made a theoretical

[48] *Records of the First Assembly, Committees,* Vol. II; p. 293.
[49] *Records of the Second Assembly;* p. 450.

distinction between an *act* of war and a *state* of war. It laid down the principle that an act of war on the part of a Covenant-breaking state gave all the other members the right to proceed to acts of war against that state; but so long as the act was unilateral it was not sufficient to create a state of war.[50] Therefore, the Committee was of the opinion that it was more in keeping with the high ideals of the League to allow a certain latitude in applying the sanctions; but they might declare themselves definitely at war if the defaulting state persisted in its conduct.

II. *Whose duty is it to decide that the necessity for sanctions has arisen?* The Second Assembly answered this question by adopting the following resolutions:[51]

"It is the duty of each Member of the League to decide for itself whether a breach of the Covenant has been committed. The fulfillment of their duties under Article 16 is required from Members of the League by the express terms of the Covenant, and they cannot neglect them without breach of their treaty obligations.

"All cases of breach of Covenant under Article 16 shall be referred to the Council as a matter of urgency at the request of any Member of the League. Further, if a breach of Covenant be committed, or if there arise a danger of such breach being committed, the Secretary-General shall at once give notice thereof to all Members of the Council. Upon receipt of such a request by a Member of the League, or of such a notice by the Secretary-General, the Council will meet as soon as possible. The Council shall summon representatives of the parties to the conflict, and of all States which are neighbours of the defaulting State or which normally maintain close economic relations with it, or whose cooperation would be especially valuable for the application of Article 16.

"If the Council is of opinion that a State has been guilty of a breach of Covenant, the minutes of the meeting at which that opinion is arrived at shall be immediately sent to all Members of the League, accompanied by a statement of reasons and by an invitation to take action accordingly. The fullest publicity shall be given to this decision.

"For the purpose of assisting it to enforce Article 16, the Council may, if it thinks fit, be assisted by a technical committee. This committee, which will remain in permanent session as soon as the action decided on is taken, may include, if desirable, representatives of the States specially affected." [52]

[50] This distinction between an act and state of war was recalled during the Italo-Greek dispute when Corfu was bombarded; and was used to defend the inaction of the Council on the ground that Greece, having chosen to regard that act as not one of war, did not create a state of war warranting the application of the provisions of Article 16.

[51] *Records of the Second Assembly;* pp. 451, 453, 454.

[52] The last sentence of the fourth resolution originally recommended by the Committee had an additional provision reading: "Those representatives should be selected by the Council." This proposal was not accepted by the Assembly.

It will be observed that these resolutions leave much to be desired as a clear rule of conduct: (1) Each state retains the right to decide for itself when a breach of the Covenant has been committed. (2) When a member reaches this decision, it may refer the matter to the Council or it may act alone. In the former instance, the Council will then meet and summon the parties in conflict, together with their neighbors and those states having close economic contacts with these parties. (3) If the Council finds the member state guilty, then all other states are notified and invited to take action accordingly. No rule of guidance is provided in the event that the Council does not agree with the member states which may be exercising their rights to decide when a breach has been committed.

These resolutions, therefore, permit a wide difference of opinion among member states as to which state has committed a breach of the Covenant; and, in the absence of any member referring the matter to the Council, they may act independently and without that common action upon which the efficacy of the sanction depends.

III. *At what moment and by whom should the sanctions be applied?* This question created such wide differences of opinion that the Assembly answered it by adopting a somewhat vague and contradictory resolution, treating all states alike in principle, but leaving room for exceptions. The resolution was as follows:[53]

"All States must be treated alike as regards the application of the measures of economic pressure, with the following reservation:

"It may be necessary to recommend the execution of special measures by certain States."

IV. *How should the sanctions be applied?* The Committee recommended and the Assembly passed, as an answer to this question, the following nine resolutions: [54]

1. "It is not possible to decide beforehand and in detail the various measures of an economic, commercial and financial nature to be taken in each case where economic pressure is to be applied.

"When the case arises, the Council shall recommend to the Members of the League a plan for joint action.

2. "The interruption of diplomatic relations may, in the first place, be limited to the withdrawal of the heads of missions.

3. "Consular relations may possibly be maintained.

4. "In cases of prolonged application of economic pressure, measures of increasing stringency may be taken. The cutting off of the food supplies of the civil population of the defaulting State shall be regarded as an

[53] *Records of the Second Assembly;* p. 457.
[54] *Ibid.;* pp. 457-458.

extremely drastic measure, which shall only be applied if the other measures available are clearly inadequate.

5. "Correspondence and all other methods of communication shall be subjected to special regulations.

6. "Humanitarian relations shall be continued.

7. "Efforts should be made to arrive at arrangements which would ensure the co-operation of States non-Members of the League in the measures to be taken.

8. "In special circumstances, and in support of economic measures to be taken, it may become advisable: (a) to establish an effective blockade of the seaboard of the Covenant-breaking State; (b) to entrust to some Members of the League the execution of the blockade operations.[55]

9. "The Council shall urge upon all the States Members of the League that their Governments should take the necessary preparatory measures—above all, of a legislative character—to enable them to enforce at short notice the necessary measures of economic pressure."

Notwithstanding these elaborate preparations, the sanctions provided in Article 16 and interpreted in these resolutions have not been applied.[56] Their application was threatened in the Polish-Lithuanian dispute, not to the aggressive state, but to the state which was the object of aggression;[57] and again in the Albanian question, when Mr. Lloyd George called upon the Council to apply it to Yugo-Slavia, in the event that it delayed or refused to carry out the decision of the Conference of Ambassadors.[58] In these two instances a farce was made out of Article 16. It was applicable to Yugo-Slavia for resorting to war, but its application was threatened only after depredations had been committed by Yugo-Slavia in Albanian territory over a period of many months and after Yugo-Slavia had agreed to accept the decision of the Conference—thereby constituting it merely a post mortem gesture. It was applicable to Poland when its troops captured Vilna;

[55] An illustration of the practical difficulties involved in an actual blockade is offered by the following example: In the summer of 1921, rail, postal, telegraph and telephone communications with Hungary were cut off by its neighbor states until such time as the reactionary movement in that country should cease. The immediate result of the blockade was to starve Vienna. That city, because of its rate of exchange, found that it could afford to buy from no other country than Hungary the milk and vegetables it required. Austria broke the blockade; thereby demonstrating that when blockading or neutral states begin to suffer, a blockade fails.

[56] An illustration, however, of the war-making powers of the Council, acting independently of the Covenant, is the resolution passed by the Council on June 22nd, 1921, which authorized the High Commissioner of Danzig, appointed by the Council, to invite the Polish Government to make war immediately, in the event that Danzig is the object of aggression or when there is a threat of aggression or in the event that Polish commerce is suddenly stopped in transit through Danzig. (Chap. VI; p. 140.)

[57] Chap. XI; p. 260.

[58] Chap. VIII; p. 190.

but instead the Council threatened to apply it to Lithuania, if it did not accept the award to Poland of the captured territory, as legalized by the decision of the Conference.

AMENDMENTS TO ARTICLE 16

The Assembly did not, however, rely solely upon these nineteen interpretative resolutions. It adopted also four amendments which have been submitted to member states for ratification, as follows:

New Paragraph 2. "It is for the Council to give an opinion whether or not a breach of the Covenant has taken place. In deliberations on this question in the Council, the votes of Members of the League alleged to have resorted to war and of Members against whom such action was directed shall not be counted."

New Paragraph 3. "The Council will notify to all Members of the League the date which it recommends for the application of the economic pressure under this Article."

New Paragraph 4. "Nevertheless, the Council may, in the case of particular Members, postpone the coming into force of any of these measures for a specified period where it is satisfied that such a postponement will facilitate the attainment of the object of the measures referred to in the preceding paragraph, or that it is necessary in order to minimize the loss and inconvenience which will be caused to such Members."

The latter part of the first paragraph of Article 16 of the Covenant shall read as follows:

* * * * * "which hereby undertake immediately to subject it to the severance of all trade or financial relations, the prohibition of all intercourse between persons residing in their territory and persons residing in the territory of the Covenant-breaking State, and the prevention of all financial, commercial or personal intercourse between persons residing in the territory of the Covenant-breaking State and persons residing in the territory of any other State whether a Member of the League or not."

Amendment 4 concerned chiefly those countries having foreign populations. Its purpose, as described by M. Motta (Switzerland), was as follows:[59]

"We were more especially anxious to prevent the intolerable situation which would arise for states with a large foreign population within their borders from a too severe or exaggerated application of the principle laid down in Article 16, involving not only the external operation of the blockade between state and state, but also the internal operations between citizens of a given state." [60]

[59] *Records of the Second Assembly;* p. 811.

[60] The present article contains the word *nationals*, for which the proposed amendment would substitute *residents*. This proposal, however, did not satisfy Great Britain, which, in the summer of 1923, submitted the following amendment: [That member states shall undertake] "to prohibit all intercourse even if not between their nationals and the nationals of the Covenant-breaking state, at least between the persons resident within their territories and persons resident

The Assembly, having approved of the foregoing resolutions, and having passed the four amendments, then passed a final resolution which provided that the resolutions should constitute a rule for guidance until the proposed amendments to Article 16 were ratified. The final resolution reads as follows:[61]

"The resolution and the proposals for amendments to Article 16 which have been adopted by the Assembly shall, so long as the amendments have not been put in force in the form required by the Covenant, constitute rules for guidance which the Assembly recommends, as a provisional measure, to the Council and to the Members of the League in connection with the application of Article 16." [62]

Thus far none of the rescue parties (the Assembly with its amendments and interpretative resolutions; the Mixed Commission with its Treaty of Mutual Assistance; and the Commission of Jurists with its opinion), has been able to give vitality to the expiring Article 16. The reason appears to be that no state is willing to undertake the friendly act of interfering in affairs which states themselves have not brought to the attention of the League, preferring to exercise its influence directly through its own foreign office; also that states realize that action under Article 16 entails responsibility and the following, which their initiative will command among other member states in the way of military support, or of an economic blockade, will not be very substantial. At the same time, not being willing to exercise their rights individually to set the League machinery in motion, member states are not willing to delegate the authority to the Council.

INTERPRETATIONS OF THE COVENANT

From the foregoing record it appears that there are three methods of interpreting the Covenant. (1) By amendment through resolutions passed by the Assembly and ratification by states. (2) By interpretative resolutions adopted as a rule of guidance by the Assembly. (3) By the Council through the opinion of jurists. In the first and second instances all member states have a voice; in the third only the Council.

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within the territory of the Covenant-breaking state." (*Verbatim Record of the Fourth Assembly,* Eleventh Meeting; p. 5.)

As this alternative did not appear clear to the First Committee of the Fourth Assembly, which examined this amendment, its consideration was deferred until the Fifth Assembly. It was also considered inexpedient to consider the amendment, since the clause to which it refers is itself an amendment, not yet ratified.

[61] *Records of the Second Assembly;* p. 803.

[62] The Treaty of Mutual Assistance recognizes these defects and is designed to remedy the impotence of this article by giving to the Council a high military command. Chap. XXVII.

In the particular instance under examination where it was sought to determine whether member states or the Council have jurisdiction to determine what constitutes a rupture and breach of the Covenant, the following is the result of the application of the three methods: [63]

Amendment to Article 16, Adopted by Second Assembly, Not Yet Ratified and Not in Force	Interpretative Resolution Adopted by the Second Assembly and in Force Until the Amendment Is Ratified	Opinion of the Commission of Jurists on the Powers of the Council, Adopted by the Council in 1924
It is for the Council to give an opinion whether a breach of the Covenant has taken place.	It is the duty of each member of the League to decide for itself whether a breach of the Covenant has been committed.	The Council may at all times estimate the gravity of the dispute and determine the course of its action accordingly. It is for the Council, when a dispute is submitted, to decide immediately whether it should recommend the maintenance or withdrawal of coercive measures as being consistent or inconsistent with Articles 12-15.

From this comparative statement of the proposed interpretations of the Covenant it would appear that it is in need of a legal interpretation. The interpretative resolutions in force, as passed by the Assembly, leave to the member state the decision for itself as to when a breach is committed, which interpretation seems to accord with the present Covenant. The amendment, adopted by the Assembly and not yet ratified, would transfer this right of deciding when a breach is committed, to the Council. But it is not in effect, because members of the Council have refused to ratify it. The opinion of the Special Commission of Jurists appears not to be in consonance with the interpretative resolution of the Assembly, but would anticipate the amendment and confer upon the Council an authority not yet sanctioned by member states, including some states which have accepted the opinion

[63] Articles 10, 15, 16 and 21 have in effect been amended through interpretative resolutions, a procedure which does not require ratification by the member states. This procedure is unknown in the United States where the Constitution is interpreted by a court and amended by the Congress and by ratification by two-thirds of the states.

of the jurists. Such are the inconsistencies into which political interpretation of a constitution is likely to lead in the absence of a judicial interpretation.

The question arises: Upon what member states is the opinion of the Special Commission of Jurists binding? Presumably upon the Council members in view of the following facts: (1) They appointed the Commission. (2) They prepared the questions which were accepted by the entire Council only after Italy and France had insisted that their Governments should first be consulted and their approval obtained. (3) Each member state on the Council had a representative on the Commission of Jurists who represented its views. (4) The Council accepted the report. The inference that member states of the Council accept this opinion as a guide is not without interest in view of the fact that France, Great Britain, Brazil, Czechoslovakia, and Spain, members of the Council, have thus far refused to ratify the amendment giving the Council authority to determine a breach of the Covenant.

But what of the other forty-four member states? Are they bound by the action of ten states? Although the Assembly was in session, the choice of submitting these questions to a Commission or the Court was not submitted to it and the Council made the decision alone, knowing that certain members of the Assembly would favor the Court. Is the opinion to be submitted to the Assembly for approval; and, if not, are the states thus far ignored expected to adopt it as a rule of action without examination and formal ratification by their Governments? Inasmuch as it was the opinion of certain members of the Council, that the answers to these five questions might constitute an amendment to the Covenant, and that being the sovereign right of states, therefore the questions should not go to the Court; and in view of the fact that the answer to the first question does constitute in reality an amendment, the question is of grave concern to the forty-four states hitherto without a voice in the matter.[64]

DISPUTES WITH NON-MEMBER STATES

"Art. 17. In the event of a dispute between a Member of the League and a State which is not a Member of the League, or between States not Members of the League, the State or States not Members of the League shall be invited to accept the obligations of membership in the League for the purposes of such dispute, upon such conditions as the Council may

[64] "In actual fact it [interpretation of the Covenant] constitutes an addition to the Covenant, a development, and even an improvement in the Covenant." *(Official Journal,* November, 1923; p. 1923). Also Chap. IX, p. 233, for discussion in Council; and Chap II, p. 58, for attrition to the Council of rights of the Assembly.

deem just. If such invitation is accepted, the provisions of Articles 12 to 16, inclusive, shall be applied with such modifications as may be deemed necessary by the Council.

"Upon such invitation being given the Council shall immediately institute an inquiry into the circumstances of the dispute and recommend such action as may seem best and most effectual in the circumstances.

"If a State so invited shall refuse to accept the obligations of membership in the League for the purposes of such dispute, and shall resort to war against a Member of the League, the provisions of Article 16 shall be applicable as against the State taking such action.

"If both parties to the dispute when so invited refuse to accept the obligations of membership in the League for the purposes of such dispute, the Council may take such measures and make such recommendations as will prevent hostilities and will result in the settlement of the dispute."

The principles laid down in this article are the following: (1) Whenever there is a dispute in which a non-member state is involved, whether with a member of the League or among themselves, it is mandatory upon the Council to invite it to accept the obligations of membership and the mediation of the Council. (2) When the Council has extended this invitation, it may then proceed immediately with its inquiry and recommend action without waiting for acceptance. (3) If a non-member state refuses the invitation and resorts to war against a member state it incurs the penalties under Article 16 which member states will apply on behalf of their fellow-members. (4) If both parties decline the invitation, the Council may take measures and make recommendations to prevent hostilities.

It will be observed that the Council is given rights with regard to non-member states which it does not possess for member states, namely, it may proceed without their consent; and it may modify the provisions of Articles 12 to 16;[65] also it may take measures to prevent hostilities; and it may apply Article 16 without the formality of proving a violation of the Covenant, as is provided for member states. In principle, this article deprives non-member states of their sovereign right to determine when they may go to war, and in effect it would make the exercise of that right subject to a general war of retaliation by member states.

Notwithstanding this extension of authority, the competence of the League to prevent war whenever non-member states are parties to controversies has not been greatly enhanced. There have been nine

[65] In January, 1923, there was a possibility of Turkey becoming involved in a dispute appealed by Great Britain under Article 11, concerning the Iraq frontier. On this occasion it became clear that the wording of Article 17 needed interpretation, for a misunderstanding seems to have arisen concerning the words in paragraph 1: "Upon such conditions as the Council may deem just," the impression created being that the Council might deal on different terms with a non-member state and with a member state. (Chap. XXII.)

controversies in which a non-member state was involved. In three of them, the Council has taken action, namely, in the Aaland Islands dispute, where Great Britain brought the matter to the attention of the Council, having secured in advance the assent of Finland, a non-member state; in the Polish-Lithuanian dispute, where Lithuania was not a member, but was admitted to the League during the controversy; and in the Eastern Carelian dispute, where Russia, not a member, refused its assent, and the question could not be settled.

In other instances the Council has taken no action, namely, in the French invasion of the Ruhr, Germany not being a member; in the Polish invasion of Russian territory, Russia not being a member; in the Greek invasion of Turkish territory, Turkey not being a member; in the Austro-Hungarian dispute over the Burgenland, and in the threats of the Little Entente on return of ex-King Charles IV, Hungary then not being a member; in the Persian-Russian dispute, Russia not being a member; and in the Italian occupation of the Free State of Fiume.

In the four instances of the invasion of the Ruhr, of Russia, of Turkey and of Fiume, no member state committed the friendly act of drawing the attention of the Council to circumstances threatening the peace of the world; but as the invasions were directed against non-member states, Article 17 was applicable and the Council was in a position upon its own initiative to invite the parties to accept the obligations of the Covenant. It did not do so, although it is clear that the aggressed non-member states were in need of intervention against members of the League and could not themselves appeal under the Covenant. The Council, however, remained inactive. In two instances, Persia and Austria, the aggressed states and members of the League, sought protection, but the Council did not exercise its authority under Article 17.

These instances indicate no clear principle. It would seem, however, that where non-member states voluntarily assent, as in the case of the Aaland Islands and Lithuania, the Council will act. Also, it was ready to make a test case in Eastern Carelia, and as a result found itself without power. On the other hand, the invasions of the Ruhr, of Russia, of Turkey and of Fiume by member states indicate that when a member state is the aggressor, the Council will not intervene to apply Article 17; and whenever a small member state, like Persia or Austria, is aggressed, the Allied Powers will attempt to make the settlement. In other words, whenever the foreign policy of one of the Principal Allied Powers is involved in a dispute between a member and

non-member state, the Council is impotent to act except in agreement with the policy of that member; and as such policy is usually opposed by some other Allied Power on the Council, frequently no action can be taken for lack of unanimity.

This concludes the examination of the first line defenses of the Covenant against war, namely, the Preamble, and Articles 10, 11, 12, 13, 15, 16 and 17.[66] The second line defenses will now be examined.

REGISTRATION AND PUBLICATION OF TREATIES

"Art. 18. Every treaty or international engagement entered into hereafter by any Member of the League shall be forthwith registered with the Secretariat and shall as soon as possible be published by it. No such treaty or international engagement shall be binding until so registered."

Secret treaties have long been regarded as causes of war, and this article aims at the prevention of war by their registration and publication. On September 1st, 1923, it was reported that the number of agreements registered by the Secretariat was 469, and of this number, 341 had been published and others were in process of publication.[67]

Important exceptions have been taken to the provisions of this article by member states, for so-called technical chapters have been withheld from registration and publication, thus necessitating its interpretation. One of the Netherlands delegates brought this general question to the attention of the First Assembly, which passed a resolution on November 23rd, 1920, requesting the Council to examine the scope of the article and to report to the Second Assembly.[68]

The Council met on February 21st, 1921, when Lord Balfour pointed out that a Committee of Jurists should be asked to study this question in a liberal spirit, as he believed the words of the Covenant not to be in accordance with the real intentions.[69] He stated the origin of the controversy to be as follows:[70]

[66] Article 8 relating to the reduction of armaments belongs theoretically in the first line of defenses but as this subject is still in the formulative stage it is discussed with future plans against war; Chap. XXXVI.

[67] *Supplementary Report to the Fourth Assembly;* p. 4.

[68] *Records of the First Assembly;* p. 209.

[69] The Labor Administration of Great Britain has adopted a policy contrary to that intimated by Lord Balfour. In presenting the Lausanne Treaty for ratification to Parliament on April 1st, 1924, Mr. Ponsonby announced that in future Parliament would be given the opportunity to examine all treaties, which would be laid upon the table for a period of twenty-one days, whether or not they required ratification. To the question whether this would include understandings which might bind the Empire to specific action under certain circumstances, the Premier returned a somewhat doubtful answer. (*London Times,* April 2nd, 1924.)

[70] *Minutes of the Twelfth Session of the Council;* p. 5.

"The origin of the difficulty which rendered this investigation necessary lay in the defensive Treaty recently concluded between France and Belgium. This Treaty included a secret and purely technical chapter which could not in the interests of international peace be registered or published."

The report of the Committee of Jurists was submitted to the Council and subsequently referred to the First Committee of the Assembly, which amended and submitted it to the Assembly. It contained three proposals: (1) An interpretation of Article 18; (2) an amendment of the article; and (3) rules to govern its application.[71]

The principles established by the interpretative resolution included: (1) That all treaties which create international obligations must be registered whenever one of the parties is a member state. (2) Such registration imposes upon the League only the obligation of publication. (3) The treaty has no binding force between the contracting parties and in regard to third parties until it is registered. (4) Any contracting party, whether a member or not, may demand registration. This interpretation upheld the article.

In the proposed amendment, however, the principle was laid down that instruments of a purely technical or of an administrative nature which have no bearing on political international relations and instruments consisting of technical regulations which modify instruments already registered, need not be registered. This proposal was recognized as an attempt to destroy the efficacy of Article 18 and led to a bitter debate in the Assembly. Viscount Cecil expressed his fear that it would be difficult to distinguish which treaty had and which had not a bearing on political international relations. M. Fernandez (Brazil), *rapporteur,* conceded that it was impossible to define what agreements were of a political character, but appealed to the good faith of the members. Viscount Cecil suggested that the President of the Permanent Court of International Justice might examine documents about which such questions arose, and give a certificate to those which were not of political character, exempting them from registration. M. Fernandez objected, giving two reasons why he considered this procedure dangerous, as follows:[72]

"The first reason is of a psychological and also of a political nature. We should be making the President of the Hague Court the repository of considerable secrets. Let us take the case of a complementary treaty to a treaty of alliance, of a military convention, for example, designed to operate in conjunction with a treaty of alliance: If the smallest indiscretion were committed in regard to this treaty, the President of the Per-

[71] *Records of the Second Assembly;* p. 704.
[72] *Ibid.;* p. 845.

manent Court of International Justice would be held responsible; a scandal might be engineered, and his prestige might be affected; he might become a person criticised by public opinion in the countries concerned. * * * * *

"There is still more serious reason which we must take into consideration.

"The scheme we have before us contemplates exceptions, but there is also the sanction. We appeal not only to the good faith of the parties, but also their interests; it might happen that the parties, through negligence or bad faith, or by means of an inadmissible interpretation, might attribute the character of an unimportant convention to a political treaty; the sanction might then be applied so that if the treaty were invoked before any jurisdiction it might be pronounced void."

Finally, the following compromise was suggested by Lord Balfour:[73]

"The Assembly, taking note of the proposal for the amendment of Article 18 contained in the report of Committee No. 1, decides to adjourn further consideration of this amendment until the Third Assembly, it being understood that, in the meantime, Members of the League are at liberty to interpret their obligations under Article 18 in conformity with the proposed amendment."

Upon the suggestion of a delegate from Colombia, the resolution was divided and the first part was passed unanimously. To the second part, namely, that members might interpret their obligations in conformity with the proposed amendment, five objections were recorded.

The question was immediately raised concerning the status of the second part of the resolution, permitting states to interpret provisionally their obligations in accordance with the proposed amendment, which had been deferred by the vote on the first part of the resolution for another year. To this procedure the delegate from Colombia objected on the ground that:[74]

"The temporary tends with us to become the permanent. The Covenant is the *Magna Charta* of the League of Nations and when we are unable to violate it directly we make provisional proposals until such time as the Covenant may be amended."

It was evident that the second part of the resolution could not be passed unanimously, as required, whereupon the President of the Assembly suggested that its text was more in the nature of a recommendation than a resolution and made the following statement:[75]

"Unanimity is required for an affirmative decision, so that we cannot say that the resolution was approved by the Assembly. Neither can we say, however, that it was rejected. We can merely say that it was not

[73] *Records of the Second Assembly;* p. 851.
[74] *Ibid.;* p. 882.
[75] *Ibid; p.* 895; see also Chap. I, p. 5.

accepted. If we say that it was rejected, the opposite interpretation becomes involved, and it might be thought that the interpretation adopted was the contrary of the interpretation proposed, which would be the exact opposite of the Assembly's intention. We must, therefore, say precisely that the proposal was not accepted, which I think, will meet the case."

Here the matter rests, for further discussion has been deferred from one Assembly to another.[76] In theory the article remains unamended, and uninterpreted, for none of the three proposals was adopted. In practice, its operation remains obscure upon the particular issues raised, namely, may a state reserve from registration or publication, technical chapters, or regulations which modify registered treaties? France follows the practice that it may do so, while Great Britain has recently taken the stand that all treaties are to be submitted first to Parliament, which policy insures the publicity sought under Article 18. In the meantime, a very considerable number of treaties have been registered, indicating good faith in observance of the article.

One other question raised by this discussion remains unanswered, namely, to what extent may states escape from their obligations under an existing treaty by reason of the failure to register it? There was a difference of opinion in the First Committee of the Second Assembly, one group holding that it ceased to be binding between the parties when not registered, and the other contending that such an omission "would merely have the result of rendering the treaty of no legal value as regards the Council, the Assembly, the Court of Justice and any other body under the authority of the League." [77]

THE REVIEW OF TREATIES

"Art. 19. The Assembly may from time to time advise the reconsideration by Members of the League of treaties which have become inapplicable and the consideration of international conditions whose continuance might endanger the peace of the world."

This article should be read in connection with Article 11, inasmuch as it appears that the intention was to make treaties the subject for reconsideration at the instance of the Assembly, whenever international conditions arising under them might endanger peace. But this concept has suffered a limitation in practice. In the dispute between Bolivia and Chile, which was before the Assembly in 1920 and 1921, a Committee of Jurists advised that the request made by Bolivia was not in order and could not be considered by the Assembly.[78] The

[76] *Records of the Third Assembly;* p. 219.
[77] *Records of the Second Assembly;* p. 701.
[78] Chap. XX; p. 375.

Bolivia-Chilean dispute, however, laid down the principle that the Assembly had the power to *invite* the members to consider certain treaties or international conditions when these treaties had become inapplicable. That the consent of the signatories was necessary was disclosed by the fact that action by the Assembly under this article requires unanimous consent and, in the event of either signatory being opposed, the provisions of a treaty cannot be discussed or any suggestions made.

INTERNATIONAL UNDERSTANDINGS

"Art. 20. The Members of the League severally agree that this Covenant is accepted as abrogating all obligations or understandings *inter se* which are inconsistent with the terms thereof, and solemnly undertake that they will not hereafter enter into any engagements inconsistent with the terms thereof.

"In case any Member of the League shall, before becoming a Member of the League, have undertaken any obligations inconsistent with the terms of this Covenant, it shall be the duty of each Member to take immediate steps to procure its release from such obligations."

Article 21, however, contains certain important exemptions, which should be noted in connection with Article 20, as follows:

"Art. 21. Nothing in this Covenant shall be deemed to affect the validity of international engagements, such as treaties of arbitration or regional understandings like the Monroe Doctrine, for securing the maintenance of peace."

This exemption appears to have been inserted to satisfy American opposition and to protect the Monroe Doctrine,[79] although its reference to that policy as a regional understanding has been considered to be both inaccurate and inadequate.[80] The exemption, however, is now being used for quite another purpose, namely, as the foundation for military blocs in Europe.[81] This movement originated in a proposal

[79] The reservation proposed in the United States Senate was as follows:

"The United States will not submit to arbitration or to inquiry by the Assembly or by the Council of the League of Nations, provided for in said treaty of peace, any questions which in the judgment of the United States depend upon or relate to its long-established policy, commonly known as the Monroe Doctrine; said doctrine is to be interpreted by the United States alone and is hereby declared to be wholly outside the jurisdiction of said League of Nations and entirely unaffected by any provision contained in the said treaty of peace with Germany." *(Congressional Record,* 66th Congress, 1st Session, Nov. 19th, 1919.)

[80] Chap. XXXV.

[81] On September 27th, 1918, Mr. Wilson laid down certain principles as representing the United States Government's interpretation of its own duty with regard to peace. Among these were the following:

"There can be no leagues or alliances or special covenants and understandings within the general and common family of the League of Nations. All interna-

made by the Czechoslovakian representative to the Second Assembly, to amend Article 21 in the following manner:[82]

"All agreements between two or more Members of the League the object of which is to define or complete the engagements contained in this Covenant for the maintenance of peace or the promotion of international co-operation, may be not only approved by the Council or the Assembly, but also promoted by these bodies and negotiated under their auspices. These provisions may also be applied to international engagements such as treaties of arbitration, to supplementary conventions intended to extend the jurisdiction of the Court of Justice, to regional understandings like the Monroe Doctrine, or to any other engagements which, in the opinion of the Council or the Assembly, conform to the conditions of the first paragraph of this Article."

It will be observed that the aim of this proposed amendment was to bring all engagements for the maintenance of peace, including the Monroe Doctrine, under the supervision of the Council and to authorize that body to promote such negotiations. This proposal was not adopted, but on October 4th, 1921, the Second Assembly adopted an interpretative resolution in place of an amendment, providing as follows:[83]

"The Committee therefore proposed to the Assembly that Article 21 should be retained in its present form, and draws the Assembly's attention to the fact that agreements between Members of the League, tending to define or complete the engagements contained in the Covenant for the maintenance of peace or the promotion of international co-operation, may be regarded as of a nature likely to contribute to the progress of the League in the path of practical realizations.

"Such agreements may also be negotiated under the auspices of the League of Nations, for example, in special conferences with its assistance."

This interpretative resolution, therefore, recognizes military alliances or blocs among its members to be a legitimate practice and authorizes the League to promote their negotiation. Since that time, a number of so-called regional understandings, in the form of treaties, have been negotiated by member states.[84] These understandings raise the question whether being designated as regional understandings does not

tional agreements and treaties of every kind must be made known in their entirety to the rest of the world. Special alliances and economic rivalries and hostilities have been the prolific source in the modern world of the plans and passions that produce war. It would be an insincere as well as an insecure peace that does not exclude them in definite and binding terms."

[82] *Official Journal,* May, 1921; p. 252.

[83] *Records of the Second Assembly;* p. 831.

[84] Chap. XXXVI.

exempt them from the provisions of the Covenant, as provided in Article 21, and make unnecessary their registration and publication under Article 18.[85]

COMMENTARY

The following table indicates the course which disputes have taken under the Covenant. There have been recorded thirty-seven disputes which threatened a rupture or to disturb international peace and good understanding.[86] Of these disputes all but four have been in some form before either the Assembly or Council, so a fair test of the practical value of the Covenant has been afforded.

Of these thirty-seven disputes, resort was had in fourteen instances to some form of aggression in which military force was used, either before, or without, resort to the conciliatory methods of the Covenant. Among these are major disputes involving territory and reparations. In thirteen other disputes resort was had to political intervention. These, with the exception of Upper Silesia and Iraq, constitute minor disputes involving small territories and minorities.

It will be observed from the table that in the fourteen instances where resort was had to force, the question has been definitely settled, in nine of which (namely, the Burgenland, Polish-Russian War, Vilna, Corfu, Memel, the Ruhr, Fiume, Teschen and Eastern Galicia) the aggressor was either rewarded with a slice of territory or with reparations. In the other instances, Greece lost its conquest over Turkey and Albania, Russia did not seek territory in Persia, and was only pursuing General Denikin, Yugo-Slavia lost its conquest over Albania and Panama lost its territory to Costa Rica as awarded by the White decision. In one other instance, upon the threatened return of ex-King Charles to Hungary, the Little Entente threatened to use force.

Of the fourteen instances in which resort was had to conciliation, six (Upper Silesia, Hedjaz and Lebanon, Hungarian frontiers with Yugo-Slavia and Czechoslovakia, the Aaland Islands and the return of ex-King Charles) have been definitely settled; four remain unsettled (Bolivia, the Bulgarian disputes and Hungarian optants), two have been withdrawn from the League and are in process of settlement (Iraq in the Lausanne Treaty and Peru before the United States), and two have been the subject of conquest after or without political inter-

[85] Chap. XXXVI; pp. 700, 709.

[86] This list does not include the disputes arising under the administrative duties of the League, directly under the Treaty, as in the Administration of the Saar Basin and Danzig. (Chap. III; pp. 62-63.)

vention (Armenia and Georgia). In four of these instances the people most vitally concerned either lost their independence or their territory (the Aaland Islands, Armenia, Georgia, Hungary), and in another instance they were divided (Upper Silesia). In one instance (Lebanon) the people received autonomy under a French protectorate, and in Iraq a similar provision is made under British protection.

Of the nine questions referred to the Permanent Court, only six have any direct relation to the maintenance of peace; in four of these the Court rendered an opinion and in one a judgment which constituted the basis for peace and security, namely, in the instances of the Nationality Decrees, Polish-Czechoslovakian frontier, the two questions concerning German settlers, and in the Kiel Canal case. The Eastern Carelian dispute was outside its jurisdiction and remains unsettled.

From the following table it appears that of the thirty-seven disputes, thirty-three were the subject of negative, neutral or affirmative action in either the Assembly or the Council. Of the thirty-three disputes, the Council took decisive action which was accepted by the parties in four instances, the Aaland Islands, Upper Silesia, Jaworzina and Memel, the initiative in each instance being taken by an Allied Power or the Conference of Ambassadors. Of the remainder, eight questions have been referred to the Court. In five of these an opinion has been rendered which has been accepted by the parties. In two opinions relating to minorities in Poland, that state has accepted the opinions in principle, but their application is encountering obstacles; while in one no relief was afforded.

The following table discloses also that the center of responsibility for the settlement of disputes under the Peace Treaties is not the League of Nations but the Principal Allied Powers, acting either singly, or collectively through the Conference of Ambassadors. The apparent influence of these powers in the disputes that were settled and the absence of their intervention in the controversies that were not settled, and the preeminence of the Conference of Ambassadors, suggest the question whether peace would not be better served through issues decisively met and disputes expeditiously settled were these Powers to assume full legal responsibility without resort to nebulous moral influences of uninformed and uninterested states; also, whether states, not bound by the Peace Treaties, might not find the Permanent Court of Arbitration as satisfactory now as before the war for the settlement of disputes which have no relation to the enforcement of the Peace Treaties.

THE SETTLEMENT OF DISPUTES

Resort to Aggression	Settlement	Resort to Political Intervention	Settlement	Resort to Law	Settlement
Bombardment of Persian Port of Enzeli by Russian warships.	Intervention by Great Britian.	The Aaland Islands.	Council of League.	The Netherlands Delegate.	Court opinion.
Hungarian Invasion of Austrian Territory (the Burgenland).	Principal Allied Powers; and Italy in Protocol of Venice.	Upper Silesia.	Council of League.	The Agricultural Workers.	" "
				Agricultural Production.	" "
Polish - Russian War.	French Assistance to Poland.	Armenia.	*Evicted by Turkey: conquered by Russia.	Tunis and Morocco Nationality Decrees.	Court opinion dispute withdrawn and settled by parties.
Yugo-Slav Invasion of Albania.	Conference of Ambassadors.	Bulgaria and Macedonians.	Not settled–back to parties.		
Greek Invasion of Albania.	Conference of Ambassadors.	Bulgaria and Western Thrace.	Not settled–back to parties.	Eastern Carelia.	Court opinion; no jurisdiction.
Polish Conquest of Vilna.	Conference of Ambassadors.	Hungarian Optants in Roumania.	Not settled.	Czecho - Slovak - Polish Frontier (Jaworzina)	Court opinion.
		Turkish-Iraq Frontier.	Withdrawn and pending.		
Italian Bombardment of Corfu.	Conference of Ambassadors.	Peru and Chile.	U. S. A.	German Settlers in Poland.	Court opinion; disregarded and negotiation in progress.
Lithuanian Conquest of Memel.	Council of the League.	Bolivia and Chile	Not settled.	Acquirement of Polish Nationality.	Court opinion; new questions under arbitration.
*French Invasion of the Ruhr.	France; Special Commission.	Hedjaz and Lebanon.	France.		
*Italian Conquest of Fiume.	Italy and Yugo-Slavia.	Hungarian-Yugo Slav Frontier.	Conference of Ambassadors.	*The S. S. Wimbledon and the Kiel Canal.	Court judgment and damages.
Greco - Turkish War.	Turkey; Lausanne Treaty.	Hungarian - Czecho - Slovak Frontier.	Council of League.		
*Czecho-Slovak-Polish Engagement over Teschen.	Supreme Council.	The Georgian Republic.	Appropriated by conquest by Russia.		
Polish Invasion of Eastern Galicia.	Conference of Ambassadors.	Return of Ex-King Charles to Hungary.	Little Entente.		
Panama - Costa Rica Outbreak.	United States.				

*Not submitted to League; all others were before it in some form.

CHAPTER II

THE MACHINERY OF THE LEAGUE OF NATIONS

The Covenant is the constitution of an association of states called the High Contracting Parties and constituting the League of Nations. The original members of the League are enumerated in the Annex to the Covenant. There are two groups, the first including all of the Allied and Associated Powers except Russia; and the second comprising thirteen neutral states. These were admitted or are admissible without vote of the Assembly and need give no guarantees as to military and naval forces as a condition of admission. The representatives of all member states constitute the Assembly; the representatives of ten member states constitute the Council; and the work of these two bodies is performed through a Secretariat.

THE ORGANIZATION OF THE ASSEMBLY

The Assembly consists of representatives selected by the governments of all the members of the League, the delegation being limited to three for each member, and having one vote. Each of the self-governing dominions in the British Empire is entitled to a delegation with a separate vote.[1] These representatives assemble annually in Geneva to consider an agenda, prepared by the Secretary-General with the approval of the President of the Council. The Assembly receives a report from the Secretary-General, covering the work of the preceding year. The discussion of this report is the first item on the agenda, which includes also the items proposed by the Council or member states; and all items from previous Assemblies which may be ordered included; and the budget. The work of the sessions is carried on by means of committees, of which there are six, namely: First, Constitutional Questions; Second, Technical Organizations; Third,

[1] The reservation, proposed by the United States Senate, as a condition for ratification of the Treaty, was as follows:

"The United States assumes no obligation to be bound by any election, decision, report, or finding of the Council or Assembly in which any member of the League and its self-governing dominions, colonies, or parts of empire in the aggregate have cast more than one vote, and assumes no obligation to be bound by any decision, report or finding of the Council or Assembly arising out of any dispute between the United States and any Member of the League, if such Member or any self-governing dominion, colony, empire, or part of empire united with it politically has voted." *(Congressional Record,* 66th Congress, 1st Session, Nov. 19th, 1919.)

Reduction of Armaments; Fourth, Budgets and Financial Questions; Fifth, Social and General Questions; and Sixth, Political Questions.

Disputes submitted to the Assembly are referred to one of these committees for examination and report and its conclusions are presented to the Assembly in the form of resolutions or recommendations. A resolution, in either the Committee or Assembly, requires a unanimous vote for its adoption; a recommendation requires only a majority vote in either Committee or Assembly. A recommendation is presumed to relate to matters of procedure.[2] Members, present in Committees or Assembly, who refrain from voting, are considered not to be present; accordingly, a roll call which has no adverse vote is recorded as unanimous and the motion is adopted.[3]

THE ORGANIZATION OF THE COUNCIL

The Council consists of four permanent and six non-permanent members.[4] The four permanent members are Great Britain, France, Italy and Japan. The six non-permanent members are elected by the Assembly and are at present Brazil, Sweden, Spain, Belgium, Czechoslovakia and Uruguay. Each member has one representative and one vote. The Council meets quarterly and more often if necessary.

For the election of the non-permanent members, the Covenant makes rather vague provisions. Paragraph 1 of Article 4 provides that "these four members of the League shall be selected by the Assembly from time to time in its discretion." Paragraph 2 of the same article gives the Council the right to increase the number of permanent and non-permanent members, with the approval of the majority of the Assembly. An amendment, laying down regulations relating to the term of office and conditions of re-eligibility of the non-permanent members, has been passed by the Second Assembly, but still awaits ratification. The number of non-permanent members was increased by the Third Assembly, on the request of the Council, from four to six. This resolution met with some objection, summarized by a Netherlands representative, as follows:[5]

[2] M. Bourgeois is of the opinion that the Council considers the resolutions of the Assembly not to be binding on Members. He says:

"The Council henceforth considers that the resolutions of the Assembly have the highest moral importance but are not definitely binding since it is entrusted to the Council to study in what way they may be realized." *(L'oeuvre de la Société des Nations* p. 42.)

[3] This rule makes possible the adoption of measures by a minority. (See p. 45.)

[4] The original proposal included five permanent members, the other place being reserved for the United States.

[5] *Records of the Third Assembly,* Vol. I; pp. 223-4.

"The increase in the number of the Members of the Council and the reversal of the proportion between permanent and non-permanent Members will, in the opinion of the Netherlands delegation, weaken the Council and clog its action. * * * If this year we admit a radical transformation of the principal organ of the League, particularly if we do so by reason of the aspirations (however legitimate they may be) of political groups (which may be necessary phenomena), or under the influence of a desire to keep personal individual power from which benefits are derived, what guarantee have we that next year similar arguments will not be advanced, and that every year, instead of regarding the composition of the Council from the point of view of the lasting aims of the League, it will be determined in accordance with the ephemeral state of affairs at the moment."

That this seems to be the case is indicated by an examination of the composition of the Council. The first non-permanent members, Belgium, Brazil, Greece and Spain, were appointed provisionally by the Peace Conference, under paragraph 1, Article 4, of the Covenant. Only one of these countries—Spain—was neutral and not a signatory to the Peace Treaties.[6] The first Assembly substituted China for Greece in response to a recommendation of Lord Balfour to the effect that one non-permanent member be selected from Asia. This policy has been reversed, for the Fourth Assembly substituted Czechoslovakia for China; and the Council now has four European and two South American non-permanent members.

It is a mistake to assume that the interpretation of the Covenant and the settlement of disputes under it, have been guided by idealists or along the path of a new diplomacy.[7] The list of diplomatists who have guided the destinies of the Council is an imposing one. It includes Lord Curzon and Lord Balfour, formerly of the British Foreign Office; M. Viviani and M. Hanotaux, of the French Foreign Office; M. Hymans, Foreign Minister of Belgium; M. Benes, Foreign Minister of Czechoslovakia; M. Quinones de Leon, Spanish Ambassador to France; M. da Cunha, Brazilian Ambassador to France; M. Wellington Koo, formerly Chinese Ambassador to London, M. Tang-Tsai-Fou, Minister Plenipotentiary to Rome; M. Guani, Minister from Uruguay to Brussels, and Signor Salandra, ex-Premier of Italy. Viscount Cecil, regarded as one of the idealists, has been in His Majesty's Foreign Service. Viscount Ishii, Japanese Ambassador to France, is a member of the

[6] The election, by the Third Assembly, of Sweden and Uruguay as fifth and sixth non-permanent Members, raised the number of neutral countries on the Council to two—Sweden not being a signatory to the Treaties.

[7] Point 1 of the Fourteen Points states the policy of the new diplomacy to be: "Open covenants of peace openly arrived at, after which there shall be no private international understandings of any kind, but diplomacy shall proceed always frankly and in the public view."

Council and also of the Conference of Ambassadors, thus linking the two bodies through his intimate knowledge of the policies and procedure and debates of both.[8]

The procedure for disputes is as follows: Any matter affecting peace may be brought to the attention of the Council by any member;[9] whereupon the Secretary-General may call a special meeting of the Council or place the matter upon the agenda for the next meeting; and he may refer the matter to members of the Secretariat to prepare the subject for discussion by the Council. The Council then appoints one of its members (or outside persons) to act as *rapporteur*[10] who makes a report to the Council, usually based upon the researches of members of the Secretariat. These reports are submitted in the form of a finding of facts, a conclusion and a recommendation, and are usually adopted by the Council *in toto*, and constitute its decision.

The sessions of the Council may be private or public, as the Council unanimously decides at the opening of a session or as it may change its policy as to publicity at any time thereafter. Such part of the minutes of the meetings as the Council decides to publish appear in the minutes of its proceedings, a special publication of the League.[11]

[8] The predecessor of Viscount Ishii on the Council, M. M. K. Matsui, was also Ambassador to France.

[9] This interpretation has been extended to include a combination of members acting in unison, namely, the Conference of Ambassadors.

[10] In view of the composition of the Council, it is difficult to appoint *rapporteurs* of benevolent neutrality in the disputes appealed to the League. Thus, a Japanese representative reported on the German protest on Eupen and Malmedy, on the Hungarian protest in the question of optants in Transylvania and in the dispute between Bulgaria and its neighbor states. A Belgian representative dealt with the settlement of the Austro-Hungarian and Hungarian-Yugo-Slav frontiers, while a Brazilian reported on the frontier between Czechoslovakia and Hungary. (For the reports of Chinese representatives concerning the Saar Basin, see p. 104). Sweden, the only member of unquestionable neutrality on the Council, has been a member for over a year, but in no political question has its representative, M. Branting, been appointed *rapporteur*. The fact that these *rapporteurs* are usually in the diplomatic service accredited to one of the Allied Powers or are ministers of Foreign Affairs leads to the inference that these reports are satisfactory to the Allied Powers before they are submitted to the Council. (See statement of M. Branting, member of the Council, *Records of the Second Assembly;* p. 59.)

[11] Throughout this discussion, reference has been made to the inadequacy or lack of continuity in official publications affecting disputes. For examples of important omissions, see the Italo-Greek dispute, the inquiry into the Saar Basin, and the Upper Silesian question. The student of public affairs will find it extremely difficult to piece together connected and complete narratives of disputes and their settlement from the published records of the League, owing to the omission of original documents. The practice, begun in the Aaland Islands dispute and in the early stages of the Polish-Lithuanian controversy, of publishing such documents, has been abandoned and the reader must rely upon the interpretation of these

ORGANIZATION OF THE SECRETARIAT

The Secretariat of the League is created under Article 6 of the Covenant. It comprises a Secretary-General named in the Annex to the Covenant, whose successor is to be named by the Council with the approval of a majority of the Assembly, together with a staff which he appoints with the approval of the Council. The Secretariat is divided into several sections, including the following: (1) Administrative and Minorities; (2) Economic and Financial; (3) Information; (4) International Bureaus; (5) Legal and Registration of Treaties; (6) Mandates; (7) Political; (8) Social Questions; (9) Transit and Communications; (10) Health; (11) Disarmament.

The high offices of the Secretariat are mainly held by nationals of the Principal Allied Powers. The Secretary-General, Sir Eric Drummond, was appointed by name in the Annex to the Covenant. The Deputy Secretary-General is French, and of the two Under-Secretary-Generals, one is Italian and the other Japanese. Of the eleven sections, seven have directors who are nationals of the Principal Allied Powers; of the important Legal and Information sections, the Director is French; of the Economic and Financial, Transit and Social sections, British; of the Disarmament section, Italian; and of the International Bureaus, Japanese. The staff of the Secretariat, exclusive of the International Labor Office, numbers over four hundred persons. Concerning its national composition, Sir William Meyer (India), in a speech to the Second Assembly, stated that 275 out of the—then—367 members of the Secretariat were English, French and Swiss, while India and China each had only one member on the staff.[12] The neutral and small states do not exercise any appreciable influence through the personnel of the Secretariat.

The appointments of the higher officials are for seven years, and members of the staff may be appointed for twenty-one years, subject to review at the end of seven-year periods. The administrative cast of the Secretariat is apparent; but of its political activities little is known, since its detail is merged in the work of the Council. The

documents given by the Secretariat. This practice is in striking contrast to the publications of the Court, which publishes full and unedited reports. Also, the publicity given to important controversies tends to decrease. On this point, answering questions in the Second Assembly concerning this fact, Viscount Cecil said:

"The Council appears to have made certain tentative efforts toward publicity, but, like a bather, when he first feels the cold water, they hastily withdrew from the experiment." *(Records of the Second Assembly;* p. 64.)

[12] *Records of the Second Assembly;* p. 215.

work of the Secretariat is manifold; it sends out and collects information, it prepares the agendas for the Council and the Assembly, draws up reports and memoranda on the subjects discussed, convenes conferences, registers treaties, prepares the publications of the League and administers expenses. In addition to making investigations and preparing reports for use by the Council, the discretionary powers, exercised by the Secretariat, in the matters which it examines, rejects, advances or sets aside, have a wide political aspect. Considerable latitude is also permitted to the Secretariat in carrying forward negotiations between meetings of the Council.[13]

For purposes of keeping in touch with Great Britain and France, the Secretariat has branch offices in London and Paris. Plans were made for such a branch office in South America, but it was considered more practical to establish this office at Geneva, where it has been functioning since January, 1923.[14]

RIGHTS OF THE ASSEMBLY

The Covenant grants to the Assembly certain exclusive rights. Of these, four have an important relation to the settlement of disputes: (1) The admission of new states; (2) amendments to the Covenant; (3) review of treaties; and (4) election of non-permanent members to the Council. These will now be examined in the light of practical experience.

The admission of new states is governed by paragraph 2 of Article 1 of the Covenant, which reads as follows:[15]

[13] For illustration of negotiations conducted by the Secretariat, see Chap. XXXIII.

[14] The *Monthly Summary* of the League of Nations (April, 1924; p. 56) contains the following item:

"M. Pacheco, Minister of Foreign Affairs of Brazil, notified the Secretary-General by telegram on March 14th, that the President of Brazil had issued a decree providing for the permanent representation of Brazil at the seat of the League. This representation is to consist of a representative of the rank of Ambassador, an assistant Minister, a First and Second Secretary of Legation and technical assistants."

Press dispatches from Geneva indicate that this is part of a general movement to constitute the League an international court and that certain duly appointed diplomats to Switzerland with headquarters at Berne are removing their headquarters to Geneva much to the chagrin of the Swiss Republic.

[15] In this connection an interesting question has arisen. The United States and the Hedjaz are both mentioned in the Annex of the Covenant; both having been allies and signatories to the Treaty. It has been alleged that it is possible for the United States to join the League without the Senate ratifying the Treaty. The Hedjaz refused to ratify the Treaty and has not been admitted to the League. Chap. XIX; p. 365.

"Any fully self-governing State, Dominion or Colony not named in the Annex may become a Member of the League if its admission is agreed to by two-thirds of the Assembly, provided that it shall give effective guarantees of its sincere intention to observe its international obligations, and shall accept such regulations as may be prescribed by the League in regard to its military, naval and air forces and armaments."

But Article 9 has an important bearing upon the admission of states. It provides that "a Permanent Commission shall be constituted to advise the Council on the execution of the provisions of Articles 1 and 8 and on military, naval and air questions generally." The Council has taken the position that this article entrusts to it the execution of Article 1 and it is, therefore, for the Council to decide what are effective guarantees of a sincere intention to observe its international obligations, and that under Article 8 it is for the Council to prescribe the regulations as to military forces and armaments which a state must accept as a condition of admission.[16] This interpretation in practical operation makes the two-thirds vote of the Assembly dependent upon a prior unanimous vote of the Council and places the Assembly in the position of not being able to vote upon the admission of a state until the Council has recommended it for admission.

There has been an instance, however, when the Assembly appears to have exceeded the authority contained in Article 1. This occurred when it stipulated that Albania and the Baltic states (namely, Finland, Esthonia, Latvia and Lithuania) should agree to accept the principles of the Minority Treaties as a condition of admission, and in certain instances required them to amend their local laws.[17] The question of the protection of minorities has nowhere been defined as an international obligation; on the contrary, it is regarded as a peculiarly delicate question of sovereign right; and states have accepted the principle only when compelled to do so.[18] As none of these states was a signatory to the Treaties of Peace which imposed this principle as an international rather than a domestic obligation, the question of the interpretation of Article 1 by the Assembly seems to call for judicial opinion.

AMENDMENTS

Article 26 of the Covenant provides for amendments, as follows:

"Amendments to this Covenant will take effect when ratified by the

[16] The Permanent Military Commission reports and makes its recommendations to the Council. (For report on states applying for admission to the First Assembly, see *Official Journal*, November-December, 1920; p. 40-44); and Chap. XXXVI.

[17] Chap. III; p. 79, for details of action taken.

[18] Chap. XXX for opposition of Poland.

Members of the League whose Representatives compose the Council and by a majority of the Members of the League whose Representatives compose the Assembly.

"No such amendment shall bind any Member of the League which signifies its dissent therefrom, but in that case it shall cease to be a Member of the League."

Since the thirteen states mentioned in the Annex to the Covenant, and not signatory to the Peace Treaties, had no voice in making the Covenant to which they became contracting parties, and in view of the fact that their constructive thought arose from a peace rather than a war spirit, it was but natural that they should find certain provisions unsatisfactory and suggest amendments.

During the meeting of the First Assembly, in 1920, these zealous small states desired to impress upon the Covenant some evidences of their personality and views. Among others, the Argentine and Norwegian, Swedish and Danish Governments transmitted to the Assembly certain proposals for amendments to be placed on the agenda.[19] The Norwegian Government also submitted a draft for an annex to the Covenant, providing for commissions of arbitration. These proposals were referred to the First Committee. They created consternation among the Principal Allied Powers, who had no desire to change the Covenant. In the discussion in the First Committee, M. Viviani (France) took the point of view that the Committee should refuse to consider *any* amendments to the Covenant, on the ground "that the First Assembly must not take any action which would appear to reverse the provisions of the Treaty of Versailles."[20] He was supported by Lord Balfour (Great Britain) and Viscount Ishii (Japan). This opinion prevailed and the proposals of the Scandinavian group were defeated in the Committee on November 22nd, 1920. But the First Committee did not desire to leave amendments unprovided for and on November 26th it proposed the following recommendation for adoption by the Assembly:[21]

"That the Council be invited by the Assembly to appoint a Committee to study the Amendments to the Coverant which have been presented to

[19] The following are illustrations of the subjects proposed in these amendments: The Scandinavian amendments suggested specifying in Article 4 the period for which non-permanent members be appointed on the Council; that a paragraph be inserted in Article 16 to the effect that a member state be allowed to maintain intercourse with a Covenant-breaking state, in certain instances; that Article 3 be modified to fix the date on which the Assembly should meet and that it may be called at any time on demand of ten member states. The Argentine amendments included a modification of Article 1 to permit universal admission of states.

[20] *Records of the First Assembly, Committees,* Vol. I; p. 8.

[21] *Ibid.;* p. 20.

this session of the Assembly. The Committee shall report to the Council, which shall in its turn place its conclusions before the Assembly at the next session." [22]

The proposal was laid before the Assembly by Lord Balfour, and discussed on December 2nd, 1920. He gave as reasons for its adoption: (1) That it was undesirable for the Assembly to pull to pieces the Treaty of Versailles; and (2) that the League was still young, and before beginning to amend, it ought to have more experience. The Scandinavian representatives reluctantly gave their consent; and the recommendation was passed. But a representative from Portugal voiced the objections of a part of the Assembly when he said:[23]

"I am among those, who think the amendments to the Covenant may be examined, discussed and put to the vote at this first Session of the Assembly of the League of Nations. I am sensible of the fact that, textually, the Covenant is not perfect. * * *

"The truth is that the Covenant was drawn up by the victorious countries. These countries are numerous, but they do not alone constitute the League of Nations. It is natural, therefore, that all the members of the League should examine the Covenant with a view to modifying it and to adapting it to the needs of the League, which at the moment includes States other than those who drafted the Covenant."

When the proposal was put to a vote, the delegations of Argentina and Paraguay voted against it. Thereupon M. Viviani said:[24]

"It is not possible that unanimity can be necessary for a vote of this nature. The General Committee is confusing the unanimity which would be necessary in order to secure the adoption of the essentials of the amendment with the majority which is sufficient for the Assembly to come to a decision on a question of procedure."

It will be observed that, by this action, the following precedents were established: (1) Proposals for amendments must first be submitted to the Assembly; (2) the Assembly assigns its right of examination to the Council; (3) a proposal put to vote on the theory that it requires unanimous approval may, when defeated, be passed on the theory that it relates to procedure, as that requires but a majority vote; and (4) the Council safeguarded the Treaty of Versailles, through obtaining the authority to examine all of the pending resolutions for amendments.

This action, however, cost the League of Nations the Argentine

[22] The First Committee approved of this recommendation by a "unanimous vote" of eighteen members. Exclusive of the chairman, vice-chairman and secretary, there were thirty-eight members of the Committee, and twenty-three members, or a majority, refrained from voting.

[23] *Records of the First Assembly;* p. 251.

[24] *Ibid;* p. 260.

Republic as an active member. On December 4th, 1920, its delegation sent to the President of the Assembly a letter which read, in part, as follows:[25]

"The invitation received by the Argentine Republic contained an announcement of the admendments to the Covenant. * * * We accordingly prepared a series of drafts, which were expounded in the statements read in the Plenary Assembly on November 17th. * * * These were our proposals: Admission to all sovereign States, admission of small States, but without the right of voting; the Council to be constituted by election on democratic lines; obligatory submission of disputes to the Courts of Arbitration and Justice. * * *

"The Members of the Assembly will separate in a few days without having discussed the great constitutional questions which have offered the best guarantee to public opinion of the breadth of view and organic vigour of the League. * * * The adoption or rejection of the lofty principles contained in the amendments which have been presented to the League would have served to demonstrate to our country, and to public opinion, by what permanent rules of conduct the League of Nations was likely to be guided. * * *

"The chief aim of the Argentine Government in sending the Delegation, of which I have the honour to be Head, was to co-operate in the work of drawing up, by means of amendments to the Covenant of the Charter, in which we hoped it would be possible to embody the ideals and principles which Argentina has always upheld in international affairs, and from which she will never deviate. When once this aim has disappeared, owing to the postponement of the amendments, the moment has arrived for Argentina's co-operation in the work to cease."

In accordance with the resolution authorizing it to examine the proposed amendments, the Council, at its meeting on February 21st, 1921, appointed a committee of eleven, under the chairmanship of Lord Balfour. The report approved of a number of amendments and was sent from the Council to the Second Assembly and thence to the First Committee, where it underwent a number of modifications.

When the First Committee forwarded its report to the Assembly, questions arose concerning the conditions of voting on, and ratification of, amendments to the Covenant. The First Committee had suggested a three-fourths majority for voting, but it was questioned whether this was in agreement with Article 5 of the Covenant. The question, also, was raised whether three-fourths of the whole Assembly were meant, or only three-fourths of the delegations present at the time of voting. To this latter, M. Rollin (Belgium), *rapporteur*, answered: "We must

[25] *Records of the First Assembly;* pp. 276-77.

have confidence in our President." [26] Finally, the following recommendation was passed on October 3rd, 1921:[27]

"The Assembly recommends to the delegations that no resolution of amendment shall be passed during this session unless it receives a three-fourths majority, in which there shall be included the votes of all the Members of the Council represented at the meeting."

Following this recommendation, the amendment to Article 26, which deals with the question of amendments itself, was voted, in three resolutions, as follows:

"The first paragraph of Article 26 of the Covenant shall be replaced by the following text:

" 'Amendments to the present Covenant the text of which shall have been voted by the Assembly on a three-fourths majority, in which there shall be included the votes of all the Members of the Council represented at the meeting, will take effect when ratified by the Members of the League whose representatives composed the Council when the vote was taken, and by the majority of those whose representatives form the Assembly.'

"A paragraph reading as follows shall be added after the first paragraph of Article 26:

" 'If the required number of ratifications shall not have been obtained within twenty-two months after the vote of the Assembly, the proposed amendment shall remain without effect.'

"The second paragraph of the present Article 26 shall be replaced by the two following paragraphs:

" 'The Secretary-General shall inform the Members of the taking effect of an amendment.

" 'Any Member of the League which has not at that time ratified the amendment is free to notify the Secretary-General within a year of its refusal to accept it, but in that case it shall cease to be a Member of the League.' " [28]

With the exception of the proposed three amendments to Article 6, in connection with the budget, the Third Assembly did not discuss amendments. At the request of the Third Assembly, the Council notified the members of the League that it was no longer necessary to ratify the first and third amendments to this Article, as the matters contained therein had been otherwise disposed of.[29]

Accordingly, twelve amendments are pending. On the date required by the Second Assembly, namely, August 3-4, 1923, none had received

[26] *Records of the Second Assembly;* p. 731.

[27] *Ibid.;* p. 732.

[28] The amendments which have a bearing upon security against war have been noted in the preceding chapter under the articles to which they refer.

[29] Annex to the *Supplementary Report to the Fourth Assembly;* pp. 12-13.

sufficient ratifications, and the Fourth Assembly considered the matter with a view to expediting their ratification. In the discussion before the First Committee, the question arose whether the proposed amendments had lost their legal value. The representative from Colombia considered they had lapsed, as the time limit set forth in paragraph 2 of Article 26 had expired; but the Belgian representative argued that paragraph 2 of Article 26 was itself an amendment and not yet in effect. The Italian representative suggested that the time limit of twenty-two months would have to be counted from the day of the ratification of paragraph 2 of Article 26. The British representative proposed as a solution that the amendment to Article 26 should be ratified after all the other amendments. The Belgian representative, however, thought that in case a practical question arose, the Council might have recourse to the Court of International Justice. The question of what may occur if the amendments to Article 26 come into effect before the others, is not settled, but is not without interest. With a view to expediting ratifications, the Fourth Assembly passed a resolution on September 22nd, 1923, in which it requested the Secretary-General to enter into communication with the delegations of all members which have not yet ratified the amendments, for the purpose of asking them to use their influence with their governments concerning ratification.[30]

The Fourth Assembly had one amendment before it, submitted by Great Britain. The procedure in this case was different from that taken with previous amendments; for the question was not referred to the Council, but its discussion was deferred to the next meeting of the Assembly.

The difficulty encountered in amending the Covenant, that experience having thus far failed to produce any effective amendment, has, however, led the League to adopt a practice which is said to be causing concern, namely, interpreting the Covenant in a manner to constitute in effect an amendment without requiring ratification by the states. Three methods have been followed. First, by the Assembly: Canada, unable to obtain an amendment to Article 10 in three successive Assemblies, accepted an interpretative resolution in the Fourth Assembly, which failed by one vote to pass, but which may be regarded as being in effect among the states voting for it.[31] The amendments to Article 16 not yet being in effect, the Assembly adopted nineteen interpretative resolutions to answer until the amendments become effective.[32]

[30] *Verbatim Records of the Fourth Assembly,* 14th Meeting; p. 2.
[31] Chap. I; p. 5.
[32] *Ibid;* pp. 18-21.

A probationary amendment was attempted when Lord Balfour introduced a resolution to permit exemptions from the registration of certain parts of treaties. Although the resolution failed, the practice continues.[33]

Second, by the Council: It may interpret the Covenant by the reference of questions to commissions of jurists. Such was the practice followed in the sequence to the Italo-Greek dispute.[34] Whether an interpretation of the Covenant granting powers to the Council and accepted by the Council is binding upon any members other than those composing the Council has not been determined.

Third, by the Permanent Court: It may interpret the Covenant; as in the instance of the Nationalities Decree of Tunis and Morocco where the Court rendered an opinion upon paragraph 8 of Article 15; and again in the Eastern Carelian case upon Article 17. On the other hand, legal questions concerning the interpretation of the Covenant were withheld from the Court on the ground that their interpretation was not the function of the Court.

In view of these various methods it would seem that some agreement should be reached as to the responsible body for interpreting the Covenant, if that instrument is not to become the plaything of politics.

REVIEW OF TREATIES

Another exclusive right of the Assembly is contained in Article 19, which grants to that body the right to advise the reconsideration, by members of the League, of treaties which have become inapplicable; also the consideration of international conditions whose continuance might endanger the peace of the world. No authority seems to be given to the Assembly to determine the *fact* of inapplicability of treaty provisions. In practice, this right has not been exercised by the Assembly. In the one instance where the provision was put to a test, it was shown that this right of advice may be exercised only upon the *invitation* to the signatories to a treaty. Should the Assembly disregard this condition, the vote of a signatory state, also a member of the Assembly, opposing a reconsideration of one of its treaties, will be sufficient to prevent action; as Chile demonstrated in the dispute with Bolivia.[35]

NON-PERMANENT MEMBERS OF THE COUNCIL

Article 4 provides that the non-permanent members of the Council shall be selected from the Assembly from time to time in its discretion.

[33] Chap. I; p. 30, [34] *Ibid;* p. 15, and Chap. IX; p. 229. [35] Chap. XX; p. 372.

Also with the approval of the majority of the Assembly, the Council may name additional members of the League whose representatives shall always be members of the Council; and the Council, with like approval, may increase the number of non-permanent members.

The Assembly has exercised this right to replace Greece with China, and China with Czechoslovakia, Belgium, Brazil and Spain remaining undisturbed. Also with the consent of the Assembly, the Council has added two non-permanent members, Sweden and Uruguay.

An amendment proposed by the Scandinavian delegation to the First Assembly, that these elections be held at regular intervals, was defeated.[36]

THE MAINTENANCE OF PEACE

The Covenant is not specific in its allocation of responsibility for the prevention of war. As to general powers, it grants identical rights to both Assembly and Council in Articles 3 and 4, wherein it says that "the Assembly may deal at its meetings with any matter within the sphere of action of the League or affecting the peace of the world." [37] The matter is further complicated by the fact that the Council has the advantage in procedure, while the "League" has the advantage in action. Thus, under Article 11, a matter may be referred to the Council specifically, as in the instance of Upper Silesia; the Council may call a meeting, but it is the League which is to take action. It is nowhere specified that the Council may make a recommendation unless it resorts by implication to other articles when not invoked by the parties.

From the first, the identical rights possessed by the two bodies to hear disputes was the subject of grave concern to the Principal Allied Powers. At the meeting of the First General Assembly, a committee, of which Lord Balfour was chairman, was appointed to examine the questions raised by these rights. The Committee considered, among others, the following questions, which are of real importance in the settlement of disputes.[38]

(1) When either the Council or the Assembly has a matter under consideration, may the other body consider the matter? (2) When a decision has been made by either the Council or the Assembly, is that decision to be considered final or may the party or parties appeal to the other body? (3) When there is doubt concerning which body has jurisdiction, shall a mixed commission be appointed to decide the

[36] See p. 44.

[37] Paragraph 4, Article 4 is identical in prescribing the powers of the Council.

[38] *Records of the First Assembly, Committees,* Vol. I; pp. 11-14, 90-98.

question? (4) May one of the organs of the League render a decision upon a matter expressly committed to the other? (5) What is the nature of the executive effect of the decisions of the Council and Assembly?

The First Committee submitted a report to the Assembly on December 6th, 1920, pointing out that the Assembly was not a chamber of deputies, nor was the Council an upper chamber; for while they had identical rights, they were not called upon to discuss or decide exactly the same points. The Committee was of the opinion that the Council could not be regarded as the executive and the Assembly as the legislative branch of the League; there being no analogy in constitutional law, the League must be regarded as a body having at its disposal two distinct organs.

The Committee, therefore, recommended that the Assembly accept the conclusion reached by Lord Balfour, in his report, submitted to and adopted by the Council on August 2nd, 1920, which was as follows:[39]

"In the opinion of the Committee it would not seem to be desirable or necessary to formulate in explicit language at the present time what are the precise functions which the Council and the Assembly are respectively expected to perform. In the report presented by Mr. Balfour and approved by the Council the following conclusion is reached:

" 'The moral I would draw from these broad considerations is that the less we attempt to formulate in explicit language the precise functions which the Council and the Assembly are respectively expected to perform, the better for the future of the League.

" 'Let us substitute for any such formulating of our respective duties a resolve to deal with any difficulties between the Assembly and the Council, not according to pre-arranged rules, but according to the dictates of tact and common sense, treating each case as it arises on its merits.'

"The Committee recommends the Assembly to accept and act upon this conclusion."

The Committee, in answer to the questions raised, made the following recommendations which the Assembly adopted:[40]

"(a) The Council and the Assembly are each invested with particular powers and duties. Neither body has jurisdiction to render a decision in a matter which by the Treaties or the Covenant has been expressly committed to the other organ of the League. Either body may discuss and examine any matter which is within the competence of the League.

"(b) Under the Covenant, Representatives sitting on the Council and the Assembly render their decisions as the Representatives of their respective States, and in rendering such decisions they have no standing except as such Representatives.

[39] *Records of the First Assembly;* p. 283. [40] *Ibid.;* p. 320.

"(c) The Council will present each year to the Assembly a report on the work performed by it." [41]

The Committee considered it unnecessary to decide the question of appointing Mixed Committees to determine matters of doubtful competence. Upon the question of the nature of the executive effect of the decisions of the Assembly and Council, it said:[42]

"In our opinion, the Assembly and the Council should be considered to have complete authority in all matters which the Covenant or the Treaties have committed to them for decisions. There are, however, matters referred to in the Covenant which are not within the competence of these organs, but require the concurrence and action of the Governments concerned in the form of international conventions such as the serious matters contemplated by Article 23, paragraphs (a), (b), (e), (f). In these matters one must not forget that the responsibility of the Government represented at the Assembly, which is external to the Assembly, cannot be engaged. The action of the Assembly should accordingly take the form of a recommendation or invitation leading up to agreement between the Governments."

This report is noteworthy in two other respects. Firstly, representatives in either body render their decisions as members of their respective states and their governments are bound by their acts in all matters not expressly requiring ratification. Secondly, in lieu of its future active participation in the settlement of disputes, the Assembly is to receive a report advising it of the work performed by the Council.

These resolutions carry out what appears to have been the intention of the framers of the Covenant, namely, to leave the question of competence vague, allowing for future development; permitting the "dictates of tact and common sense" to operate in each case as it arises, on its merits.[43] In practice two instances have arisen which indicate that these principles have operated to the complete advantage of the Council. One occurred in the Italo-Greek dispute when the Council

[41] The following item recommended by the Committee was deleted by the Assembly on the ground that the principle was fully covered in paragraph (c):

"The Assembly has no power to reverse or modify a decision which falls within the exclusive competence of the Council. The same respect must be shown by the Council for decisions of the Assembly." *(Records of the First Assembly;* p. 284.)

The representative of Greece proposed the following:

"That during sessions of the Assembly, the Council shall not begin to deal with any matter within the common competence of the two organs of the League without first referring the matter to the Assembly." *(Records of the First Assembly;* p. 292.)

This motion was defeated on the ground that a delay of even a day or two might be serious, and was in conflict with Article 15 (paragraphs 9 and 10), which contain a procedure for referring matters to the Assembly.

[42] *Records of the First Assembly;* p. 284.

[43] Lord Balfour, *Records of the First Assembly, Committees,* Vol. I; p. 94.

assumed all of the powers of jurisdiction two days before the Assembly was in session and retained it throughout the session;[44] and the other occurred when Lithuania desired to bring before the Assembly the question of the jurisdiction of the Council, the Sixth Committee declining to report in favor of this procedure.[45]

The record of the Assembly on behalf of peace under these identical rights, as established under the guidance of Council members, is as follows: Of the thirty-three disputes which have been before the League in some form, the Assembly took definite notice of the following:[46]

The question of Armenia was before three successive Assemblies. The First Assembly took up the matter on a motion by Viscount Cecil and passed a resolution asking the Council to appoint a Commission of Inquiry; the Assembly of 1921 considered an appeal of the President of the Armenian delegation and passed a resolution urging the Council to impress upon the Principal Allied Powers the necessity of an Armenian National Home; the Assembly of 1922, on motion of Viscount Cecil, was content to pass a resolution expressing its gratitude to the Council for its action, and reminding it again of the National Home for Armenians. The disputes between Bolivia and Chile, and Peru and Chile were appealed by Bolivia and Peru to the First Assembly under Article 19. Peru withdrew its request within a few weeks; the affair of Bolivia was postponed to the Second Assembly, which referred it to a Committee of Jurists. The Committee decided that the question was not correctly framed and the matter was dropped. The First Assembly also considered the Polish-Russian War on motion of one of the British representatives, and passed a resolution asking for information from the Council concerning its lack of action in this dispute.

The Second Assembly considered an appeal by Albania, and recommended that this country accept the pending decision of the Conference of Ambassadors and asked the Council to appoint a Commission of Inquiry. One of the Canadian representatives raised the question of Eastern Galicia, and the Second Assembly passed a resolution asking that the Council "draw the attention of the Principal Allied Powers" to this problem. This resolution was renewed by the Third Assembly. The dispute between Poland and Lithuania was referred to the Second Assembly by the Council; and a resolution was passed appealing to the wisdom of the parties for the purpose of reaching an agreement.

In the Third Assembly, Lithuania appealed against arbitrary action

[44] Chap. IX; p. 222. [45] Chap. XXXIII.
[46] For details of each controversy consult the various chapters.

by the Polish Government and was referred to the Council. A Lithuanian request to the Fourth Assembly, to refer certain matters to the Permanent Court of International Justice, has been postponed and awaits consideration by the Assembly of 1924. M. Brouckère, Belgian representative, brought to the attention of the Third Assembly the plight of the Republic of Georgia. The Assembly passed a resolution inviting the Council to follow events in that country. Dr. Nansen moved that the Third Assembly request the Council to consider steps to be taken for putting an end to the Greco-Turkish War. The Assembly passed a resolution requesting the Council to express the unanimous desire of the Assembly to this effect, without interfering with the negotiations then pending.

In the Fourth Assembly, the question of Eastern Carelia was discussed, and a resolution was passed requesting the Council to keep itself informed.

Under Article 14 of the Covenant the Assembly possesses with the Council the right to request an advisory opinion from the Court. The Council has requested eight such opinions from the Court and the Assembly none. In the Italo-Greek dispute, had the question of the interpretation of Article 15 of the Covenant been placed before the Assembly, in accordance with the established precedents on Articles 10 and 16, members of the Assembly stated that they would have favored the Court.

Under the authority granted to the Assembly to deal with any matter within the sphere of action of the League, the Assembly has the right to make investigations. This also was a cause of concern to the Council. In the First Assembly, the purpose of the Council to control investigations became evident. During the discussion, M. Viviani said:[47]

> "The Assembly cannot investigate anything except when it is sitting. The Assembly will investigate questions which the Council * * * will already have investigated. The investigations of the Council would overlap the investigations made by the Assembly. When two bodies are entrusted with investigating the same question anarchy and discord are inevitable."

No formal resolution was passed restricting the authority of the Assembly, but the practice has in effect done so. The following are illustrations: In the appointment of a Committee to examine the scope of Article 18, the matter was not referred to the First Committee of the Assembly, as was the most direct procedure, but instead the

[47] *Records of the First Assembly;* p. 288.

Council was requested to appoint a committee.[48] In the appointment of a Blockade Committee to recommend amendments to Article 16, the Council was authorized to act.[49] Similar procedure was followed with reference to Conciliation Commissions.[50] The procedure is now so well established that in all important matters the Assembly Committees are not requested to examine and advise the Assembly, but instead the Council is authorized first to deal with the matter.

Important investigations, therefore, in their initial stages have been removed from the Assembly to the Council, which formulates the policies and transmits them to the Assembly for adoption. The action taken by the Assembly is necessarily more or less perfunctory, as members of the Assembly are not familiar with either the information or political reasons which have influenced the recommended policy.

THE RULE OF UNANIMITY

"Except where otherwise expressly provided in this Covenant, or by the terms of the present Treaty, decisions at any meeting of the Assembly or of the Council shall require the agreement of all the members of the League represented at the meeting."

"All matters of procedure at meetings of the Assembly or of the Council, including the appointment of Committees to investigate particular matters, shall be regulated by the Assembly or by the Council and may be decided by a majority of the Members of the League represented at the meeting."

With regard to the Assembly, the rule of unanimity in all disputes which are submitted to it directly protects a member state from action without its consent, unless the subject is construed to be a matter of procedure. Thus Chile was able to prevent action being taken in its dispute with Bolivia.[51] But it has become the tendency of the Assembly when a resolution cannot be passed unanimously to resort, if possible, to a recommendation which "may be passed on a majority vote," [52] thus imperiling the protection. In matters referred from the Council, the exceptions hereinafter noted as being applicable to the Council, apply to the Assembly, and the consent of the member state, a party to the dispute, is dispensed with in reckoning a vote to be unanimous.

It is, however, one of the peculiarities of the Assembly that in a body

[48] Chap. I; p. 28.
[49] *Ibid.;* p. 17.
[50] *Ibid.;* p. 15.
[51] Chap. XX; p. 372.
[52] The question of what constitutes procedure appears to depend somewhat in both Assembly and Council, upon the expediency of the matter in hand.

which requires a unanimous vote, it should be possible to take action through a minority. This is made possible by Rule 19 of the procedure, providing that "representatives who abstain from voting shall be considered as not present."[53] Thus, if a majority refrains from voting, a minority may pass a measure unanimously.

The protection afforded a member state in the Assembly does not, however, extend to the Council. The Covenant makes the following exceptions: (1) When a member of the Council is a party to a dispute the Council may make a unanimous recommendation exclusive of the vote of that member. Thus, in the Italo-Greek dispute the Council could have taken jurisdiction over the Italian protest, had not France supported Italy. Later, Signor Salandra detached the question of interpreting the Covenant from the actual dispute; then his one vote was effective to prevent these abstract questions from being referred to the Court. Were the United States a member of the Council and a party to a dispute, it would be unable to prevent the Council's making a recommendation, under Article 15, by the mere fact of unanimity being required for action by the Council. Under Article 4, the following provision is made:

"Any Member of the League not represented on the Council shall be invited to send a Representative to sit as a Member at any meeting of the Council during the consideration of matters specially affecting the interests of that Member of the League.

"At meetings of the Council, each Member of the League represented on the Council shall have one vote, and may have not more than one Representative."

From these provisions it would appear that a member state is entitled to a vote. But it is not equally clear whether the provisions of paragraph 6 of Article 15 apply to such a non-member of the Council. It reads as follows:

"If a report by the Council is unanimously agreed to by the Members thereof other than the Representatives of one or more of the parties to the dispute, the Members of the League agree that they will not go to war with any party to the dispute which complies with the recommendations of the report."

Inasmuch as this exemption appears to apply only to members of the Council who are parties, the question arises whether a party, not a member of the Council, but invited to sit with it and having a vote, could prevent a unanimous report. Such an instance arose in the dispute concerning Hungarian optants in Roumania.[54] When the

[53] Chap. I; p. 38

[54] Chap. XXXIII.

question came before the Council, the Hungarian representative requested that neither party be given a vote, as otherwise the vote of the Roumanian delegate would oppose a reference to the Permanent Court. It was, therefore, apparent that at this point a state was protected and could protest against a settlement without its consent. But such did not prove to be the case, for the Council then resorted to paragraph 4 of Article 15, which reads:

"If the dispute is not thus settled, the Council, either unanimously or by a majority vote, shall make and publish a report containing a statement of the facts of the dispute and the recommendations which are deemed just and proper in regard thereto."

Therefore, the question of whether a non-member of the Council has the protection of its vote against action taken without its consent, when it is a party to a dispute and is invited to sit with the Council, is open to doubt.[55] It appears that a state may block action by its vote under paragraph 6 of Article 15, as was demonstrated in the Hungarian-Roumanian dispute; but the Council may still make a recommendation under paragraph 4, which is effective in moral force, although it does not bind the parties in the same manner as paragraph 6.

The position of non-member states is even more problematical. Under Article 17 they may be invited to accept the obligations of membership, but no provision is made for granting them a vote. The Council is authorized to modify only Articles 12-16 in such disputes. It will be recalled also that the rule of unanimity applies "except where otherwise provided in the present Covenant or *by the terms of* the present Treaty." Under this provision the Council, for instance, upon a majority vote, may conduct an investigation into the domestic affairs of the Central Powers.[56] Also, under the Lausanne Treaty, it is permitted to take such a vote on a number of matters, although the Covenant not being a part of that treaty, does not constitute it a "present treaty." [57]

These illustrations of the vagaries of the rule of unanimity are presented as an appreciation of the fact that a state is not protected in its natural rights as a disputant by the mere existence of this rule; nor can it safeguard itself against being a party to policies laid upon the

[55] An exception seems to have been made in the case of Upper Silesia, where a decision was taken affecting the interests of Poland without inviting a representative of that state to sit with the Council, indicating that the provisions of Article 4 are discretionary rather than mandatory (Chap. VII; p. 185).

[56] Art. 280, Versailles Treaty; Chap. III; p. 67.

[57] Chap. III; p. 69.

League by various treaties, upon which the League is apparently not consulted in advance; which policies may be executed in some instances by a majority two-thirds vote.

Through experience, neutral states have discovered that it is not an easy task to amend the Covenant nor transform that instrument into one expressing their views. The Principal Powers have thus far removed all danger of tampering with the Covenant by acquiring a right to preliminary examination of proposed amendments and have shown no disposition to have that instrument changed in any essential particulars.

THE ADVANTAGES OF THE COUNCIL

In theory, both the Assembly and Council have been given jurisdiction over disputes, but the procedure laid down in the Covenant for dealing with such disputes favors the Council in the following respects: (1) In the event of an aggression, the Council advises the means which members of the League shall take, in which event the Council may deal directly with its members and not through the Assembly (Article 10). (2) When there is war or a threat of war, the Council shall summon a meeting to recommend what action its members shall take, provided a member requests the Council to meet (Article 11). (3) When the members submit a dispute to arbitration or inquiry it is the Council which makes an award or a report (Article 12). (4) In the event that a member state does not carry out the award, the Council proposes the steps to be taken (Article 13). (5) If members do not submit their disputes to arbitration, any party may take the matter to the Council, which investigates, endeavors to effect a settlement, makes a statement, or publishes a report and makes recommendations (Article 15). (6) When a member raises the question whether a dispute is international or domestic, the Council decides (Article 15). (7) When a member resorts to war, the Council recommends the military forces to be used (Article 16). When a member disregards the Covenant the member state may be evicted by the Council (Article 16).[58] (8) In the event of a dispute arising between a member and non-member state, or between two non-member states, the Council invites the non-member state or states to accept the obligations of membership, and if

[58] The question of the guilt of a state in violating the Covenant is not determined by the Assembly which admitted the state, and it is entitled to no hearing by that body; but may be evicted by the Council, of which it may or may not be a member.

it refuses and resorts to war, the Council may take measures or make recommendations (Article 17).[59]

COMMENTARY

The machinery established under the Covenant to maintain peace disregards sound principles of political organization. It does not conform to such organization in that there is no proper separation of legislative, judicial and executive functions. Either body, theoretically, may exercise all three, and the Council does exercise all three. It does not follow business organization, whereby the Assembly would correspond to a board of directors and the Council to an executive committee. On the contrary, the Council has assumed the position that it is not responsible to the Assembly, but is in every way superior to it. By gradual attrition, important functions of the League have been arrogated to the Council, and the Assembly occupies the position, as a Persian delegate expressed it, of "a pageant for the power of the Council."

Whatever may have been the original intention in assigning to these two bodies separate, identical and co-ordinate functions, it is clear that the Principal Allied Powers control the activities of the League for the purpose of preserving the Peace Treaties and the benefits derived under them. In the following respects have changes been made to the advantage of the Council:

THE ASSEMBLY	THE COUNCIL
An instrument of democracy.	Hearings denied to people for whom the Council acts as trustee over the sovereignty under which they must live. (See p. 120.)
The instrument of the new diplomacy; open covenants openly made, and publicity.	Administered by a Council composed of the past masters of the old diplomacy; private meetings; steadily decreasing publicity and summaries of reports and documents in place of the originals; practice of open and closed sessions.
Admission of new states by a two-thirds vote of the Assembly under Article 1.	Priority given to Council recommendations under Article 8, placing actual control in the Council.

[59] Non-member states are invited to accept the obligations of the Covenant without having the privilege of exercising any of its rights, the penalty for refusal being the liability of having all member states make war upon them.

THE ASSEMBLY	THE COUNCIL
Amendments require vote of Assembly and ratification by two-thirds of the states.	Preliminary investigation and formulation of these amendments by the Council; ratifications to include all members of the Council. One of its members may defeat an amendment.
In theory the right to make investigations.	In practice acquired by the Council.
Vote of unanimity binding upon members in the Assembly.	Exceptions allowed to the Council.
Advisory opinions from the Court may be requested by the Assembly—none requested.	Eight requested by the Council.
The term "League of Nations" is used in the Covenant and Treaties conferring duties upon that body.	The Council assumes itself to be the League and when its competence was questioned declined to refer the question to the Assembly. (p. 321.)
In the settlement of disputes, the Assembly discussed ten disputes, passing resolutions in seven, referring the matters to the Council; no action taken in the other three; in the Italo-Greek dispute its sessions suspended.	Of thirty-three disputes before the League, twenty-eight have been considered by the Council and but one referred from the Council to the Assembly for moral support.
The High Commissioner of Danzig is to be appointed by the League.	The Council makes the appointment without consulting the Assembly and hears and decides all appeals from his decisions.
Review of treaties is the right of the Assembly but it may be blocked whenever a signatory member state opposes such review. (See p. 375.)	The negotiation of conventions is freely exercised by the Council under powers it grants to itself in the settlement of disputes.
The Assembly elects the non-permanent members to the Council and all of the states supply the budget and are responsible for acts committed in the name of the League.	The Council acts independently of both Assembly and Covenant in the execution of duties laid upon it directly by the Allied Powers in their treaties and agreements and has but one principal—the Conference of Ambassadors.

This transformation has been brought about by the magic formula "of tact and common sense" embodied in the resolution of the Assembly of December 6th, 1920, which purposely left the matter vague. That particular quality of "tact and common sense" has been supplied by some of the most skilled diplomatists in the subordination of the Assembly as a body of consequence in the settlement of disputes and in the prevention of war.

CHAPTER III

POLITICAL ENTANGLEMENTS OF THE LEAGUE

It is generally assumed that a member state is bound only by the terms of the Covenant. But far greater in actual authority are the responsibilities conferred upon the League by the Peace Treaties and by the conventions negotiated under Treaty provisions. The following classification and summary of these obligations is not all-inclusive, but is illustrative of the duties thus imposed.[1]

ADMINISTRATION OF THE SAAR TERRITORY

The administration of the Saar Territory is entrusted by the Annex to Articles 45-50 of the Treaty of Versailles to a Governing Commission "representing the League of Nations."[2] The Council is specifically designated in the Treaty as the body to appoint and remove the members of this Commission, together with its chairman, and to fix their salaries. By reason of these specific duties, the Council has assumed responsibility for hearing complaints and making decisions concerning the conduct of domestic affairs in the Saar.[3] This authority will continue until 1935, when a plebiscite is to be taken under the auspices of the League.[4] If the vote is in favor of the League of Nations continuing its administration, that body will then become the permanent administrator of the Saar Territory.

It will be observed that the obligations assumed by member states, and the powers exercised by ten states, include the executive functions of administrator, the judicial functions of a "supreme court of ap-

[1] Discussions in the United States concerning the functions of the League seem to lack precision whenever they fail to discriminate between the political entanglements of the League wherein it *takes political action and assumes political responsibilities* as under these Treaties; and humanitarian work wherein it engages in miscellaneous exercises like relief work, intellectual co-operation, protection of women and children and the like. Hundreds of organizations throughout the world have engaged in such humanitarian and educational activities without in the least degree incurring any political obligations. But no organization can deal with territorial questions, the rights of minorities, the regulation of transit, appoint governing officials over peoples in Europe, and take decisions which affect the political rights concerning life and property within those domains without at once becoming involved in the domestic political affairs of these countries. Attempts to slur over these fundamental differences cannot but lead to confusion in political thought.

[2] Chap. V; p. 95.

[3] *Ibid.;* p. 92.

[4] *Ibid.;* p. 131.

peal;"[5] and the electoral functions of conducting a plebiscite, with the possibility of acquiring the permanent control of the territory in 1935. No representative of a state can be a member of the Council of the League without assuming these responsibilities.

THE PROTECTION OF DANZIG

Article 102 of the Treaty of Versailles places the Free City of Danzig "under the protection of the League of Nations" and Article 103 authorizes the League of Nations to appoint a High Commissioner. Under the High Commissioner a constitution for a local government was constructed and placed under the guarantee of the League.[6] Article 104 authorizes the Principal Allied Powers to negotiate a Convention between Poland and Danzig. Under this Convention, the High Commissioner is authorized to act as arbitrator in disputes and appeals from his decisions are taken to the Council.[7] Although these duties were laid upon the League, the Council has performed them and now makes all decision upon appeal.[8] Under Article 19 of the Polish-Danzig Convention, the two governments being unable to agree upon the President of the Harbor Board, the Council appointed a President of Swiss nationality, as the Convention prescribes. The Council's appointee, therefore, has the deciding vote upon the administration of the Danzig Harbor.

It will be observed that the Council exercises under these Treaty provisions, executive duties in the appointment of officials and judicial functions in the review of their decisions.

UPPER SILESIAN PLEBISCITE

The Annex to Articles 87-88 of the Treaty of Versailles provided for a plebiscite to be taken in Upper Silesia and for the Principal Allied

[5] Chap V; p. 97. [6] Chap. VI; p. 138.

[7] Polish-Danzig Convention, Art. 39—In the settlement of disputes, of which there are many, largely of a legal character involving the interpretation of treaty provisions, the Council has referred none to the Permanent Court, but has submerged the vital question of justice, in conciliatory compromises designed to enable the two governments to get along without having the merits of the controversies resolved.

[8] The appointment of an Advisory Committee on International Administration was discussed by the Council at its meetings in February, April and July, 1923. This Committee was to deal with administrative questions regarding Danzig and the Saar, but it was to be *established by the governments which constitute the Council and to be paid for by those governments.* Such a Committee would definitely remove the administration of these territories from the influence of the League. Objections raised by Viscount Cecil have, however, resulted in the adjournment *sine die* of this proposal. It illustrates, however, the trend toward the concentration of authority in the Council.

and Associated Powers to fix the boundary lines of Poland and Germany in accordance therewith. Owing to disagreement among the Principal Allied Powers, the question was referred to the Council of the League. In making its recommendation to the Supreme Council, representing the Allied Powers, the Council proposed a political convention to be negotiated under its auspices. In that convention it reserved to itself the appointment of the Chairmen of the Upper Silesian Mixed Commission and of the Arbitral Tribunal. The duties of these bodies are to settle local controversies. Through these appointments the League participates in the domestic affairs of this territory.[9] This convention is to remain in force for a period of fifteen years.

It will be observed that the duties exercised by the Council were legislative in the matter of negotiating the Convention and are executive with respect to certain appointments within the Upper Silesian territory.

ADMINISTRATION OF MEMEL

Under Article 99 of the Treaty of Versailles, the Principal Allied and Associated Powers acquired the title to the Memel Territory. The Council drafted provisions in a statute in which it reserved to itself the authority for one of the Committee chairmen of the League to appoint a member of the Harbor Board to administer the port.[10] The members of the Council are given the right to draw the attention of the Council to any infraction of the provisions of the Convention; any difference as to the interpretation or execution of the Convention may, on demand of one of the parties, be referred to the Permanent Court of International Justice.[11] In case of differences arising on such questions as expenses of occupation, chargeable to Lithuania, the chairman of the Economic and Financial Committee of the League is to designate an arbitrator. The administration of the port may be modified five years from the date of ratification of the Statute, but the revised plan is to be submitted for approval to the Council; the same procedure is prescribed for revision of transit provisions. Both modifications can enter into force only if so approved.[12] These duties acquired by the Council in a somewhat roundabout way, are, therefore, to a degree executive.

[9] Chap. VII; p. 172. [10] Chap. XII; p. 279.

[11] *League of Nations Document* C-159, M-39, 1924, VII. Draft Convention Concerning the Transfer of the Memel Territory, Article 17.

[12] *Ibid.*

MILITARY POWERS

At the request of Great Britain, Sweden and Finland agreed to the submission to the League of the dispute over the Aaland Islands. One of the questions was the continuation of the policy of demilitarization of the Islands, established in 1856 and disregarded by Russia during the war. It was proposed by the League that a convention of demilitarization be negotiated under its auspices. This being accepted, the convention was so drawn that the League assumes responsibility for the enforcement of the Convention and the Council is authorized to decide upon measures to be taken for its defense, in which task the Council will be assisted by the signatories to the Treaty. In reaching a decision, the Council summons all parties signatory to the Convention, but on failure to reach a unanimous agreement, the parties are authorized to take the measures recommended by a two-thirds vote of the Council.[13]

The constitution of the Free City of Danzig drafted under the supervision of the High Commissioner and with the approval of the Council, provides that Danzig may not serve as a military base, erect fortifications or manufacture war materials without the consent of the League of Nations. Also, by resolution, the Council has authorized Poland to undertake the defense of Danzig, and has authorized the High Commissioner to invite Poland to make war whenever Danzig is threatened by land, and to use its troops whenever Polish commerce through Danzig is suddenly stopped.[14]

The armaments which Germany may possess are fixed in a Table in the Treaty of Versailles. When Germany is admitted to the League, this schedule is to remain in force until modified by the Council of the League, which modification Germany agrees to accept in advance without knowledge of what the regulations may be. (Article 164.) In a note dated March 31st, 1924, the German Government claimed that the present Allied Commission of Control of Armaments should cease, and the League of Nations undertake its duties under Article 213 of the Versailles Treaty. The Conference of Ambassadors in a note of May 28th, 1924, declared itself unwilling to relinquish control of armaments in Germany as yet. Upon request of the British Government, however, the Council at its twenty-ninth session, in June, 1924, considered the question of League control of armaments in Hungary, Austria and Bulgaria, evidently as a preliminary step for taking over control in Germany. The countries concerned, including the neighbors

[13] Chap. XIII; p. 296.

[14] Chap. VI; p. 140.

of the countries to be controlled, asked to be represented under Article 4 of the Covenant when the question was discussed. Certain members of the Council raised objections, whereupon it was decided to appoint a Committee of Jurists to examine the rights of the various states to representation in this matter.

So long as the present Treaty remains in force, Germany, Austria, Hungary and Bulgaria are to give to the Council every facility for any investigation it desires to make, acting by a majority vote, if necessary. These investigations may extend beyond military requirements into any affairs which the Council undertakes to investigate.[15]

Germany agrees to respect the frontiers of Austria as they are fixed by the St. Germain Treaty and that they shall be inalienable except with the consent of the Council. As similar provisions occur in the Treaties of St. Germain and of the Trianon, these provisions constitute the Council the guarantor of these boundaries under the Peace Treaties.[16]

COMMERCIAL AND FINANCIAL OBLIGATIONS

The League inherits a wide range of commercial duties under the Peace Treaties, of which the following are illustrations: Under Article 98 of the Versailles Treaty, Germany and Poland are to enter into a convention for railroad, telephone and telegraph facilities between Germany and East Prussia, over Polish territory and between Poland and Danzig over German territory; all cases of differences are to be settled by the Council. The Council is to appoint an arbitrator for telegraph and telephone conventions between Austria, Hungary and Czechoslovakia, in case these countries cannot agree on such a convention. After ten years, the convention may be modified by an arbitrator designated by the Council. In case a dispute arises the matter shall be submitted to the Permanent Court.[17]

The Council is to appoint the president (and two substitutes) of the Mixed Arbitral Tribunals on questions arising from debts, properties, and other matters at issue between each of the Allied Powers and Germany, Austria, Hungary and Bulgaria, whenever these countries and the Allied Powers cannot agree on such persons.[18] The conditions of the transfer of the reserves under social and state insurance in territory

[15] *Treaty of Versailles,* Art. 213; *St. Germain,* Art. 159; *Trianon,* Art. 143; and *Neuilly,* Art. 104.

[16] *Treaty of Versailles,* Art. 80; and similar provisions in the *Treaties of St. Germain,* Art. 88; and *Trianon,* Art. 73.

[17] *Treaty of St. Germain,* Art. 327; *Trianon,* Art. 310.

[18] *Treaty of Versailles,* Art. 304; *St. Germain,* 256; *Trianon,* 239; *Neuilly,* 188.

ceded by Germany, Austria, Hungary or Bulgaria are to be referred to commissions, in case special conventions are not concluded; such commissions are to submit their recommendations to the Council for decision.[19]

The League has been assigned several duties with regard to international rivers: If riparian states on international rivers fail to comply with their obligations, appeal may be made to a tribunal instituted for this purpose by the League;[20] the League is to approve of a convention relating to waterways to be drawn by the Allied Powers;[21] on the request to the League the Niemen River is to be placed under an International Commission, of which the League appoints three members.[22]

Disputes arising as to interpretation of articles on ports, waterways and railways in Germany, Austria, Hungary and Bulgaria are to be settled, as provided, by the League. The League may recommend at any time the revision of the articles relating to a permanent administrative regime and certain articles are subject to revision by the Council, after five years from the coming into force of the Treaties.[23] Any general convention relating to ports, waterways and railways, concluded by the Allied Powers within five years after the coming into force of the Treaties, must be adhered to by Germany, Austria, Hungary and Bulgaria, if such convention has the approval of the League.[24]

The reorganization of railroads owned by private companies in Austria and Hungary is, in case of dispute, to be settled by arbitrators appointed by the Council;[25] the Council has the right to appoint arbitrators for certain other questions concerning railroads between Austria and Italy and Hungary and Czechoslovakia; [26] The League of Nations

[19] Under Art. 312 of the Versailles Treaty a dispute referring to the transfer of German Social Insurance Funds in Alsace-Lorraine was appealed by France, in Dec., 1920. The International Labor Office took up the matter and appointed a Commission whose report was adopted by the Council in June, 1921. For report, see *Official Bulletin of International Labor Office*, Vol. III, Nos. 2, 12, 17 and 25.

[20] *Treaty of Versailles*, Art. 336; *St. Germain*, 297; *Trianon*, 281; *Neuilly*, 225.

[21] *Treaty of Versailles*, Art. 338; *St. Germain*, 229; *Trianon*, 283; *Neuilly*, 227.

[22] *Treaty of Versailles*, Art. 342.

[23] *Treaty of Versailles*, Arts. 376-378; *St. Germain*, 328-330; *Trianon*, 311-313; *Neuilly*, 245-247.

[24] *Treaty of Versailles*, Art. 379; *St. Germain*, 331; *Trianon*, 314; *Neuilly*, 248.

[25] *Treaty of St. Germain*, Art. 320; *Trianon*, Art. 304. Under Article 304 Hungary appealed to the League in December, 1923, concerning a railroad system two-thirds of which was ceded to Roumania. The Council has not yet taken up the matter.

[26] *Treaty of St. Germain*, Art. 321; *Trianon*, 305.

may change the procedure of arbitration in disputes concerning the Czechoslovakian railroads administration.[27]

The Council also has the duty of appointing an arbitrator to regulate the electric and water supplies on the Austro-Hungarian frontier [28] in case these countries come to no satisfactory agreement concerning the hydraulic system of the territory to be cut by the new boundaries;[29] and the chairman of the Permanent Technical Hydraulic System Commission, for the territories forming the Basin of the Danube is to be appointed by the Council. Disputes arising under this Commission are to be settled, as provided, by the League.[30]

SUPERVISION OVER TREATIES

The League is to decide any differences of opinion arising from the clause providing that the Allied Powers may not revive with Germany, Austria, Hungary or Bulgaria, treaties and conventions not in accord with the present Treaties.[31] The Council had the right to prolong various provisions of the Treaties concerning customs regulations and duties, and fishing, but this right is reported to have lapsed, not having been exercised within the given dates; finally, the Council may, by majority vote, prolong and amend the provisions relating to the treatment of nationals of the Allied and Associated Powers in Germany, Austria, Hungary and Bulgaria.[32]

It will be observed that under these various provisions in the Peace Treaties, the League of Nations has acquired obligations which require it to interfere in the domestic affairs of states with regard to their military equipment, their boundary lines, and their commercial and financial affairs, including regulations concerning waterways and railways, canal systems and the like;[33] also to act as referee in the event that any of the Allied Powers may desire to revive treaties with any of the Central Powers which are not in accord with the present Treaties;[34] and finally to act as a kind of policeman to continue the protection of allied nationals in the foregoing countries

[27] *Treaty of St. Germain,* Art. 324; *Trianon,* 307. [28] Chap. XIV; p. 313.
[29] *Treaty of St. Germain,* Art. 309-310; *Trianon,* 292.
[30] *Treaty of Trianon,* Art. 293.
[31] *Treaty of Versailles,* Art. 289; *St. Germain,* 241; *Trianon,* 224; *Neuilly,* 168.
[32] *Treaty of Versailles,* Art. 280; *St. Germain,* 232; *Trianon,* 215; *Neuilly,* 160.
[33] Were the United States a Member of the League with a representative on the Council, it would share in these interferences in the domestic affairs of European states, with some of which states the United States has not been at war.
[34] Many of these questions appear to be of a legal nature, more within the jurisdiction of a properly constituted court than a subject for political decision by the representatives of foreign powers.

THE TREATY OF SÈVRES

Had the Treaty of Sèvres been ratified by the Turkish Nationalists, the League of Nations would have found itself committed to a variety of miscellaneous political activities. The following illustrations are given as indicating the concept of the League which is held by the Principal Allied Powers. These various obligations were incorporated in the Treaty without consulting the members of the League in whose name the duties were to be executed:

(1) The Straits were to be subject to blockade and belligerent rights might be exercised in them only in pursuance of a decision of the Council (Art. 37). The consent of the Council was necessary for the Straits Commission to establish new dues and charges on shipping (Art. 53). Regulations as to passage of war materials through the Straits were to be laid down by the League (Art. 57). Disputes arising from the provisions relating to the Straits were to be settled as provided by the League (Art. 61). The League practically controlled the question whether Russia, Bulgaria and Turkey might have members on the Straits Commission, since, by Article 40, these States had first to become members of the League.

(2) The Council could recommend the independence of Kurdistan, if a majority of the population of that territory so desired (Art. 69). Five years after coming into force of the Treaty, the Council could be asked to incorporate Smyrna definitely within Greek territory, if the Smyrna Parliament by majority vote so requested (Art. 83).

(3) Arbitral Commissions or members of Arbitral Commissions were to be appointed by the Council to settle disputes arising from questions of compensation (Arts. 287 and 311). The Council was also to appoint arbitrators for the question of transfer of railway concessions (Art. 394). The League was given the responsibility of designating arbitrators in the division of railroad properties and of hydraulic systems (Arts. 359 and 363). Interpretation of all economic provisions was to be settled as provided by the League, which also had the right to recommend the revision of these articles. Turkey was bound to agree to any general convention regarding ports, waterways and railways when approved by the League (Art. 372).

(4) On request to the Council of the League, the River Maritza was to be internationalized (Arts. 346-347); Turkey was to be accorded a lease in the port of Smyrna, and Armenia a lease in the port of Trebizond, both subject to determination by the League; one member

of the commissions delimiting the area of such leases was to be nominated by the League (Arts. 350 and 352).

This proposed treaty illustrates the extent to which the Allied Powers were ready to go in placing responsibility upon the Council for the enforcement of the Peace Treaties. In most instances the Council was to exercise these responsibilities independently of the Covenant which created it and of the Assembly which appoints its non-permanent members.

THE TREATY OF LAUSANNE

This Treaty was not dictated, but negotiated by the parties. As a result it does not contain the Covenant and is much more modest in the obligations laid upon the League. Nevertheless, it lays upon the Council a variety of duties, among which the following may be noted:

(1) If the freedom or security of the Straits is imperiled, the High Contracting Parties will take action according to the decision of the Council (Article 18 of the Straits Convention). This provision is similar to Article 37 of the Treaty of Sèvres. But the President of the Straits Commission is of the Turkish nationality; neither is the condition of being a member of the League imposed on Russia for membership on the Commission (Article 12). The rights of the League are restricted to having the Commission "under its auspices," receiving an annual report, and laying down the proportion for the division of expenses (Articles 15 and 113). (2) If no agreement is reached between Turkey and Great Britain concerning the Iraq frontier, the dispute shall be referred to the Council (Article 3).[35] (3) The League guarantees the clauses concerning the protection of minorities (Article 44.) These clauses are not to be modified without the assent of a majority of the Council, and disputes arising from them are to be referred to the Permanent Court. The Turkish Government and the Council may appoint an umpire in differences arising from questions concerning the family law and status of non-Moslem minorities (Article 42). Finally, in a separate Convention for the Exchange of Greek and Turkish populations, the Council is requested to appoint three members on the Mixed Commission supervising this exchange (Article 11 of the Convention for Exchange of Greek and Turkish Populations). The Council has, however, no responsibility for the procedure of exchange and does not prescribe the conditions.

(4) The economic and financial provisions include the following: The Council is to appoint a commissioner who shall ensure that com-

[35] Chap. XXII; p. 407.

merce in transit on the Oriental Railway between the Greco-Bulgarian and Greco-Turkish frontier shall not be subject to duty (Article 107); disputes concerning the Ottoman debt shall be referred to an arbitrator appointed by the Council (Article 74); if there is disagreement concerning the adequacy of the security, the parties may appeal to the Council, and the decision of the Council shall be final (Article 48). The Council may appoint members on the Mixed Arbitral Tribunals between the Allied Powers and Turkey, should one of these Powers fail to appoint a member (Article 92). (5) In the Convention respecting the Thracian frontier, Article 4 provides that complaints of the powers whose territory borders on the demilitarized territory concerned, shall be brought before the Council.

While Turkey has made some important concessions to the Allied Powers, it will be observed that none of the provisions giving rights to the Council is an infringement of Turkish sovereignty. But it will also be observed that the Council is assuming responsibilities independent of the Covenant and without the formal consent of member states.

THE MINORITY TREATIES

A minority within the meaning of these Treaties, is a group of persons who differ in race, religion or language from the majority of the inhabitants of the country: (a) nationals of a foreign power; (b) nationals of the country concerned.[36] Protection may be granted by the laws of the country, and, therefore, be guaranteed by the state, or it may depend upon treaties and be guaranteed by foreign powers.[37]

The idea of protecting minorities is not new. In the nineteenth century, five Balkan States were created: Greece, Serbia, Roumania, Bulgaria and Montenegro. In the respective treaties, creating and recognizing these countries, the Great Powers inserted clauses for the protection of national and religious minorities. These clauses were required as conditions of recognition by the Great Powers, but no sanctions were provided and they have remained for the most part a dead letter, the Great Powers having realized the delicacy of undertaking their enforcement.

[36] The United States, being an immigration country, has a variety of minorities within the meaning of this definition; and has steadfastly held that the protection of its nationals of foreign birth was a wholly domestic matter. This narrative of the procedure concerning minorities under the League of Nations is that of the struggle of European states to approximate the American policy and tolerate no interference with the sovereignty over peoples living within their territory; whereas the policy of the League is to impose an international obligation.

[37] *Am. J. Int. Law,* October, 1923; p. 641.

With the realignment of territorial boundaries after the Great War, large numbers of people were placed under alien rule—Germans, Russians and Ukrainians were allotted to Poland; Hungarians were scattered in Roumania, Yugo-Slavia and Czechoslovakia; Bulgarians were placed under Yugo-Slavia and Greece; and Austrians and Yugo-Slavs under Italy. In view of these conditions, the Peace Conference devised a new system and it was thought advisable to entrust the guarantees for the protection of minorities to the League of Nations. These guarantees were not included in the Covenant, but in the Peace Treaties. Article 93 of the Versailles Treaty, referring to Poland, is typical of the authorization and reads as follows:

"Poland accepts and agrees to embody in a Treaty with the Principal Allied and Associated Powers such provisions as may be deemed necessary by the said Powers to protect the interests of inhabitants of Poland who differ from the majority of the population in race, language or religion." [38]

On this basis, the Allied Powers negotiated Minority Treaties with each of the new states, Poland, Czechoslovakia and Yugo-Slavia, and with the greatly enlarged state of Roumania, and also inserted in the Treaty of St. Germain with Austria, the Treaty of Trianon with Hungary and the Treaty of Neuilly with Bulgaria, clauses for the protection of minorities.

These Treaties appear to have been justified at the Peace Conference on the following grounds: Where there was a completely new state; or where considerable territory, as a result of the war, was added to an existing state. There are inconsistencies in the application of these principles which raise grave questions as to their integrity. They were not applied to Germany on the theory that all of its alien races were being taken away with the territories. On this point commentators on the Versailles Treaty observe:[39]

"The ultimate truth is this. If the principle of these Treaties had been applied to Germany, it would have been very difficult eventually to refuse a demand that it should be applied universally to all established States, but to do this would have been, as we have seen, a quite unprecedented innovation. No one with any knowledge of the condition of opinion on this matter can believe that such a proposal would have had any chance of acceptance or that it would have been wise to press it. This principle, if once adopted, could have been interpreted in such a way as to bring the

[38] Art. 51 of the *Treaty of St. Germain* and Art. 44 of the *Treaty of Trianon* create the same obligation for Yugo-Slavia; Art. 60 of the *Treaty of St. Germain* and Art. 47 of the *Treaty of Trianon* contain the same provisions for Roumania; Art. 46 of the *Treaty of Neuilly*, for Greece.

[39] *A History of the Peace Conference of Paris*, Vol. V; p. 142.

negroes in the Southern States of America under the protection of the League; it could have been applied to the Basques of Spain, to the Welsh and to the Irish."

But this whole principle fails when applied to Bulgaria, which was in precisely the same position as Germany. Bulgaria was, therefore, included because "it would have been very invidious to have exempted Bulgaria alone of all the Balkan States from obligations which were assumed by the others."[40] The Treaties included Hungary and Austria on the theory that they were being created as new states.[41] In the case of Hungary, this reasoning does not hold, as that country had been an independent kingdom within the Austro-Hungarian Monarchy and was recognized as such. Although Italy acquired more than 480,000 Yugo-Slavs and 229,000 Germans, it was not required to give any guarantee of protection to minorities.[42] The policy adopted, therefore, seems to have been taken none too seriously as a principle, but rather as a palliative for public opinion, which might otherwise have been aroused by the fact that so many millions of people were being transferred to alien territories.

In general, these Treaties provide full and complete protection of life and liberty to all inhabitants; they guarantee religious freedom; define who constitute the nationals of the country and grant the right to opt for another nationality within certain limits of time; they assure equality before the law, the right of races to use their native languages; and they provide for educational facilities. An example of the clause placing the provisions of Minority Treaties under the guarantee of the League, is Article 12 of the Polish Minority Treaty, as follows:[43]

"Art. 12. Poland agrees that the stipulations in the foregoing Articles, so far as they affect persons belonging to racial, religious or linguistic minor-

[40] *A History of the Peace Conference of Paris,* Vol. V; p. 142. [41] *Ibid.;* p. 153.

[42] According to an article by Robert Dell appearing in the *New Statesman* of March 29th, 1924, German minorities in the Tyrol seem to be undergoing oppression, indicating that the size of a state is not a guarantee. The elimination of the native language, suppression of Tyrolese customs and culture, changing of names of towns and surnames of inhabitants from German to Italian, are among the charges made by Mr. Dell. He cites a law which requires that every person who dies, regardless of his race, must have an Italian inscription put upon his tombstone.

[43] Art. 12 of the *Roumanian Minority Treaty;* Art. 11 of the *Serb-Croat-Slovene Minority Treaty;* Art. 14 of the *Czechoslovakian Minority Treaty;* Art. 69, *Treaty of St. Germain;* Art. 60, *Treaty of Trianon;* Art. 57, *Treaty of Neuilly,* contain similar provisions.

ities, constitute obligations of international concern and shall be placed under the guarantee of the League of Nations.[44] They shall not be modified without the assent of a majority of the Council of the League of Nations. The United States, the British Empire, France, Italy and Japan hereby agree not to withhold their assent from any modification in these Articles which is in due form assented to by a majority of the Council of the League of Nations.

"Poland agrees that any Member of the Council of the League of Nations shall have the right to bring to the attention of the Council any infraction, or any danger of infraction, of any of these obligations, and that the Council may thereupon take such action and give such direction as it may deem proper and effective in the circumstances.

"Poland further agrees that any difference of opinion as to questions of law or fact arising out of these Articles between the Polish Government and any one of the Principal Allied and Associated Powers or any other Power, a Member of the Council of the League of Nations, shall be held to be a dispute of an international character under Article 14 of the Covenant of the League of Nations. The Polish Government hereby consents that any such dispute shall, if the other party thereto demands, be referred to the Permanent Court of International Justice. The decision of the Permanent Court shall be final and shall have the same force and effect as an award under Article 13 of the Government."

Under the provisions of this and similar articles in other treaties, the League of Nations inherits the following obligations: (1) *These articles, not the minorities,* are placed under the guarantee of the League of Nations. (2) The articles may not be modified without the assent of two-thirds of the Council. (3) The Allied Powers agree not to withhold their assent to modifications, when approved by this majority in the Council. (4) The Council may take action only when one of its members calls its attention to an infraction or danger of infraction; it is not authorized to act upon a complaint from a minority itself.[45]

The Allied Powers and individual members of the Council have reserved the following rights: (1) They may call the attention of the Council to any infraction or danger of infraction. (2) They may regard any difference of opinion as to law or fact, arising out of the articles, as international and may refer it to the Permanent Court of International Justice. It rests, accordingly, with members of the Council

[44] This article appears to limit the right of the League to take any action under Article 2 of this same treaty, which provides that the country will protect the life and liberty of all inhabitants, including minorities.

[45] In the matter of the German Settlers in Poland, the Court was of the opinion that a special Committee of its members appointed by the Council, acting upon a complaint and presenting the matter to the Council in a report, was a sufficient compliance with this provision to give the Council the proper jurisdiction.

to call that body into action; or with a signatory to the Treaty to refer the question to the Court.

PROCEDURE UNDER THE LEAGUE

Under conditions where an oppressed people depends entirely upon the good will of a member of the Council to bring its grievances before that body, the procedure to be followed becomes of the utmost importance, for it is obvious that if a complaint cannot reach the League or cannot be considered by it with a degree of freedom, then the principles established in the Treaties become obsolete and protection a vague ideal with no concrete foundations.[46] The contest between the Member states and the Council on the question of the extent to which the protection of minorities is an international or a domestic question began on October 22nd, 1920.[47] M. Tittoni (Italy) *rapporteur,* had been requested by the Council to make an inquiry. He submitted a report, which the Council adopted, containing rules of procedure, which were as follows:[48]

"The Council must take action in the event of any infraction, or danger of infraction, of any of the obligations with regard to the minorities in

[46] The examination of the conditions of minorities is reserved for a later discussion; here only the political entanglements of the League in the domestic affairs of nations are presented through an analysis of the procedure adopted as a result of political expediency.

[47] The distinction between guaranteeing clauses of a treaty and protecting a minority is frequently overlooked. On this point commentators on the Versailles Treaty observe:

"The League is called in not as an authority with the general responsibility for insuring the principles of free or constitutional Government or guaranteeing liberties of any kind, but solely and entirely as the guarantor of certain clauses in Treaties which have been made between certain sovereign States. It is only a particular case in which the League can be used to prevent differences arising between States owing to disputes as to the execution or interpretation of a Treaty. This point is one of great importance. It is scarcely necessary to point out how dangerous a precedent would be established had the other view been adopted. It is in accordance with this principle also that the Council of the League is not qualified under the Treaties to act on complaints as to misgovernment addressed to it directly from any particular portion of the population in one of the States concerned. The Council can only be seized of the question if it is brought before it either by one of the States which are parties to the Treaty or by some other State which is itself a member of the Council. Again, it will be noted that the right of intervention is given to the League only so far as concerns the racial, linguistic or religious minorities; if, for instance, there is general misgovernment by which all the citizens of one of these States suffer, although this would be a violation of the second article of each of the Treaties, this is withdrawn from the cognizance of the League." *(A History of the Peace Conference of Paris,* Vol. V.; p. 140.)

[48] *Official Journal,* November, 1920; p. 8.

question. The Treaties in this respect are quite clear. They indicate the procedure that should be followed.

"The right of calling attention to any infraction, or danger of infraction, is reserved to the Members of the Council. This is, in a way, a right and a duty of the Powers represented on the Council. By this right, they are, in fact, asked to take a special interest in the protection of Minorities.

"Evidently, this right does not in any way exclude the right of the Minorities themselves, or even of States not represented on the Council, to call the attention of the League of Nations to any infraction, or danger of infraction. But this act must retain the nature of a petition, or a report pure and simple; it cannot have the legal effect of putting the matter before the Council and calling upon it to intervene.

"Consequently, when a petition with regard to the question of Minorities is addressed to the League of Nations, the Secretary-General should communicate it, without comment, to the Members of the Council for information. This communication does not yet constitute a judicial act of the League, or of its organs. The competence of the Council to deal with the question arises only when one of its Members draws its attention to the infraction, or the danger of infraction, which is the subject of the petition or report.

"The State interested, if it is a Member of the League, is informed at the same time as the Council of the subject of the petition. As a matter of fact, the Secretary-General has for some time adopted the procedure of forwarding immediately to all the Members of the League any document forwarded for the information of Members of the Council. This information, which may give the State concerned an opportunity of submitting to the Members of the Council such remarks as it may consider desirable, does not, however, partake of the nature of a request of the League for information with regard to the subject of the petition, nor yet does it imply, with regard to the State concerned, the obligation of furnishing evidence in its defence."

On October 25th, 1920, the Council adopted a further rule, as follows:[49]

"With a view to assisting Members of the Council in the exercise of their rights and duties as regards the protection of Minorities, it is desirable that the President and two members appointed by him in each case should proceed to consider any petition or communication addressed to the League of Nations with regard to an infraction or danger of infraction of the clauses of the Treaties for the protection of minorities. This enquiry would be held as soon as the petition or communication in question had been brought to the notice of the Members of the Council."

This procedure, however, was considerably modified later upon the suggestion of Czechoslovakia and Poland. These countries protested that the Secretariat had circulated a number of petitions from individuals of questionable authority, and that the publicity caused by these petitions damaged the prestige of the Czechoslovakian and Polish

[49] *Records of the Third Assembly*, Vol. II; p. 52.

Governments. They submitted, and the Council adopted, on June 27th, 1921, the following amendments to M. Tittoni's report:[50]

"All petitions concerning the protection of Minorities under the provisions of the Treaties, from petitioners other than Members of the League of Nations, shall be immediately communicated to the State concerned.

"The State concerned shall be bound to inform the Secretary-General, within three weeks of the date upon which its representative accredited to the Secretariat of the League of Nations received the text of the petition in question, whether it intends to make any comments on the subject.

"Should the State concerned not reply within the period of three weeks, or should it state that it does not propose to make any comments, the petition in question shall be communicated to the Members of the League of Nations in accordance with the procedure laid down in M. Tittoni's report.

"Should the State concerned announce that it wishes to submit comments, a period of two months, dating from the day on which its representative accredited to the Secretariat of the League receives the text of the petition, shall be granted to it for this purpose. The Secretary-General, on receipt of the comments, shall communicate the petition, together with the comments, to the Members of the League of Nations.

"In exceptional and extremely urgent cases, the Secretary-General shall, before communicating the petition to the Members of the League of Nations, inform the representative accredited to the Secretariat of the League of Nations by the State concerned.

"This decision shall come into immediate effect for all matters affecting Poland and Czechoslovakia.

"With regard to other States which have accepted the treaty provisions relating to the protection of Minorities, the Council authorizes the Secretary-General to inform them of the decision taken in the case of Czechoslovakia and Poland and to ask them to state whether they wish the same procedure to be made applicable to them."

It seems, however, as a result of the procedure followed in the submission of the question of the German Settlers in Poland to the Court, and of the tendency of states to assert their sovereign rights over minorities, that the Council has found it necessary to modify the procedure still further, for, on September 5th, 1923, it adopted the following resolution:[51]

"With reference to the previous resolutions relating to the procedure to be followed with regard to the protection of minorities, dated October 22nd and 25th, 1920, and June 27th, 1921, the Council of the League of Nations decides that:

"(1) In order that they may be submitted to the procedure established by the Council resolutions dated October 22nd and 25th, 1920, and June 27th, 1921, petitions addressed to the League of Nations concerning the protection of minorities:

[50] *Minutes of the Thirteenth Session of the Council;* pp. 235-236.
[51] *Official Journal,* November, 1923; p. 1293.

"(a) Must have in view the protection of minorities in accordance with the treaties;

"(b) In particular, must not be submitted in the form of a request for the severance of political relations between the minority in question and the state of which it forms a part;

"(c) Must not emanate from an anonymous or unauthenticated source;

"(d) Must abstain from violent language;

"(e) Must contain information or refer to facts which have not recently been the subject of a petition submitted to the ordinary procedure.

"If the interested State raises for any reason an objection against the acceptance of a petition, the Secretary-General shall submit the question of acceptance to the President of the Council, who may invite two other Members of the Council to assist him in the consideration of this question. If the State concerned so requests, this question of procedure shall be included in the agenda of the Council.

"(2) The extension of the period of two months fixed by the resolution of June 27th, 1921, for observations by the Government concerned on the subject of the petitions may be authorized by the President of the Council if the State concerned so requests and if the circumstances appear to make such a course necessary and feasible.

"(3) The communication, in accordance with the resolution of June 27th, 1921, to the Members of the League, of petitions and of observations (should there be any) by the Government concerned shall be restricted to the Members of the Council. Communications may be made to other Members of the League or to the general public at the request of the State concerned, or by virtue of a resolution to this effect passed by the Council after the matter has been duly submitted to it.

"(4) The consideration of petitions and observations (should there be any) of the Governments concerned by the President and two other Members of the Council, in accordance with the resolution of October 25th, 1920, shall be undertaken with the sole object of determining whether one or more Members of the Council should draw the attention of the Council to an infraction, or danger of an infraction, of the clauses of the treaties for the protection of minorities. The right reserved to all Members of the Council of drawing its attention to an infraction, or danger of infraction, remains unaffected.

"(5) The present resolution shall be communicated to the Governments which have signed treaties or made declarations concerning the protection of minorities."

The recession of the Council appears to have taken the following course in these three resolutions: (1) In October, 1920, the Council was of the opinion that it may take action in the event of an infraction or danger of infraction; that a member must call its attention to the situation; but that this did not preclude a minority from petitioning. It was also of the opinion that the question was the concern of the whole League and the documents should be forwarded to all members of the League. On October 25th, 1920, it constituted a Committee of

the Council to consider petitions as soon as they were brought to the attention of the Council. (2) In June, 1921, a reaction had set in and petitions, not coming from member states, were not sent to members of the League, but only to the state concerned. That state was given three weeks in which to indicate whether it desired to comment on the petition; if so, it had an additional two months; if not, the petition was sent to the members with the comment, if made, or without it. These regulations were adopted for Poland and Czechoslovakia, and other states which had accepted similar treaties were notified to indicate if they desired to adhere to them. (3) On September 5th, 1923, the petitions were limited as to kind and content; they must not emanate from an anonymous or unauthenticated source (whatever the Secretariat might interpret this to be); and they must contains facts not recently submitted in other petitions. The powers of the special Committee of Examination were restricted; the two months' period of delay could be extended and the circulation of documents was restricted to members of the Council.

The protection of minorities is thus no longer the concern of the whole League, but becomes a secret service for the Council. The only way information can reach the Assembly is through a special resolution passed by the Council or upon the request of the state complained against.

Czechoslovakia, Poland and Roumania, three of the chief beneficiaries under the Peace Treaties, led this reaction, which deprives minorities of any *effective* method of appealing to the Council and of recourse to that moral and public opinion upon which the League so vastly relies. For, in effect, these restrictive regulations have shut off publicity on the subject of minorities; they have eliminated forty-four Members of the League from knowledge or practical consideration of the plight of peoples to whom they have undertaken to guarantee protection;[52] and they have made it practically impossible for a petition to be considered except on the terms of the state containing the minority and impossible for a minority to receive a public hearing except with the consent of the state complained against or through their compatriots located in new countries.[53] The situation indicates the breakdown of effective international control over a question which states from time immemorial have regarded as a domestic affair, and leaves the League with unenforceable obligations under the Peace Treaties,

[52] For discussion of alternate procedure through the Permanent Court independently of the League see Chap. XXX, p. 576.

[53] Chap. XVII.

while it gives the prevailing impression that the helpless minorities in Europe are faring well under its guarantee of protection.[54]

The unsatisfactory protection afforded by the League has, however, caused other international organizations to take up the cause of minorities. The plight of German minorities in Czechoslovakia and of other minorities whose complaints do not reach, or are not considered by, the League, have been considered by the International League of Nations Unions at various meetings. The Women's League for Peace and Freedom at a recent meeting passed a resolution requesting the League of Nations to organize a permanent commission to deal with minority questions and to amend the minority treaties and apply them at least in states members of the League. Minority questions receive publicity thus more through reports on and of these international meetings than through the League.

THE ASSEMBLY AND MINORITIES

If, however, the Council has become conservative in the matter of recognizing state sovereignty, particularly of the increasingly powerful central European states, it seems with the assistance of the Assembly, to have extended its power over less powerful states in a manner for which the specific authority remains obscure. At the First General Assembly Viscount Cecil proposed the following motion:[55]

"The Assembly is not prepared to admit any new State to the League unless it will give an undertaking to enter into agreements corresponding with the Minority Treaties already accepted by several other States."

This recommendation was discussed by the Fifth Committee, where it lost its general tendency and was restricted in the following manner to some of the States applying for admission to the League at that time:[56]

"In the event of Albania, the Baltic and Caucasian States being admitted into the League, the Assembly requests that they should take the necessary measures to enforce the principles of the Minorities Treaties, and that they should arrange with the Council the details required to carry this object into effect."

[54] The Records of the League through four years mention eight petitions, as follows: Ruthenians in the Carpathians, Jews in Austria and in Hungary, Russians in Bessarabia, Czechoslovaks in Austria, Hungarians in Roumania, Bulgarians in Macedonia and Albanians in Greece. Practically nothing is reported on the merits of each case, although in a few instances the answering report of the State complained against is published.

[55] *Records of the First Assembly;* p. 406.

[56] *Records of the First Assembly;* p. 568.

Under the above resolutions, the following States were admitted: Finland and Albania in 1920; and Lithuania, Latvia and Esthonia in 1921. The procedure followed with each of these countries was different. Finland offered to submit its laws with regard to minorities for examination by the Council; was admitted to the League on the strength of this offer, and in October, 1921, the Council passed a resolution approving of the Finnish laws.[57] Albania, before its admission to the League, declared itself ready to accept the friendly advice of the Council, in forming its laws for protection of minorities. At a Council meeting on October 2nd, 1921, the representative of Albania signed a declaration, with a text similar to that of the Minority Treaties, with a last clause placing the whole declaration under guarantee of the League.[58]

This declaration was ratified by the Albanian Parliament and the new Albanian laws on minorities have been submitted to the Secretariat for examination.[59]

Lithuania, pending its admission to the League, signed a statement declaring its readiness to negotiate with the Council the details of the question of the protection of minorities. On May 12th, 1922, the Lithuanian representative signed a declaration drawn up by the Council, with a similar text to the declaration signed by Albania.[60] This declaration was not ratified, since the Lithuanian Parliament did not consider it an international act which required ratification,[61] but it came into force by resolution of the Council.[62]

Latvia and Esthonia signed statements, indicating their readiness to consult the Council, before their admission to the League. But, once admitted, both countries claimed that the laws in their constitutions provided for the protection of minorities and that they could not amend their constitutions and make new legal provisions which might be placed under guarantee of the League; neither could they place the existing constitutions under such guarantee. They protested that they were under no legal obligations, since there existed no international law for protection of minorities, and that their declaration to the Assembly

[57] *Official Journal,* December, 1921; p. 1166. [58] *Ibid.;* p. 1162.
[59] *Monthly Summary,* October, 1923; p. 209.
[60] *Official Journal,* June, 1922; p. 586.
[61] *Monthly Summary,* January, 1924; p. 307.
[62] The form of a Declaration was used, instead of a Treaty for both Albania and Lithuania, because neither state had been brought into existence by the Treaties of Peace and the obligation arose out of a resolution of the Assembly. Therefore, the League saw fit to deal directly with these states and not through the Allied Powers.

was more in the nature of acceding to a request, than submitting to a condition. Latvia also stated that it could only consider reciprocal obligations as to protection of minorities, and would not enter into a one-sided contract. Finally, both countries made declarations, giving the Council the limited right to ask for information, with reservations that the question must first be submitted to the Council by one of its Members; and not placing the clauses of the declaration under guarantee of the League.[63]

It will be observed that only in one case, that of Albania, has the procedure of the Assembly been practically effective. Finland offered no new guarantees under the resolution of the Assembly; and the Council, satisfied with the Aaland Islands guarantees, did not insist on extending protection to other Finnish minorities. Lithuania made a declaration which it has not considered important enough to ratify; and Latvia and Esthonia so restricted the powers of the Council that their declarations are more a matter of courtesy than an obligation.

Nevertheless, the precedent was established whereby the Assembly by mere resolution may establish the protection of minorities as an international obligation, to be fulfilled as a condition of admission. The question, therefore, arises whether a special rule of the kind adopted is not a discrimination against small states such as would not be applied to large states; also whether it is a fair presumption that a small state is less able or willing to protect minorities than a large state; and, if so, do Poland and Italy illustrate the soundness of the principle?

THE POSITION OF MINORITIES UNDER CONVENTIONS

In the conventions negotiated under the auspices of the League, involving territorial changes and the creation of new minorities, provisions similar to those in the Minority Treaties have been incorporated.[64] For instance, under the German-Polish Convention regarding Upper Silesia, Minority Offices have been set up in each portion of the plebiscite area and a definite procedure has been provided for by the Council, as follows: (1) Minorities submit their petitions to the highest local administrative authority. (2) The administrative authority forwards the petition to the Minority Office. (3) If the latter cannot give satisfaction, the petition goes to the Chairman of the Upper Silesian Mixed Commission. (4) The Chairman transmits his opinion to the

[63] *Official Journal,* August, 1923; p. 933, and November, 1923; p. 1311.

[64] For Aaland Islands Convention see p. 293; for Danzig Convention, p. 138; for Upper Silesian Convention see p. 176; for Memel Convention, p. 278.

Minority Office. (5) The Minority Office forwards the answer to the local authority. (6) If the petitioner is not content, he may appeal to the Council of the League, by addressing a petition to the Minority Office, whence it will be forwarded. This district is teeming with minority problems, but only a few questions concerning German schools reached the Council and were taken up in March, 1924. The complaints on this subject heard by the writer during a visit to Upper Silesia, in August, 1923, included: Threats to German parents unless they sent their children to Polish schools; seizing of building or rooms where German schools were located; the closing of seventeen German high schools out of a total of twenty-six; the shifting of dates for applications to be made for the registration of children in German schools, so that many missed the date and their applications were refused. The notice taken by the Council was, however, limited to the following:

"As further communications from the Polish Government showed that an elementary minority school had been opened and that pending the opening of German secondary schools, special German classes had been formed in the Polish secondary schools, the Council confined itself to noting the reports on the subject." [65]

COMMENTARY

One of the proposals made to the United States is that it should join the League, but assume no obligations under the Treaty of Versailles; also that it shall be free from political entanglements. In view of the foregoing facts, it is difficult to understand in what manner a representative could take his place upon the Council and a delegation attend the Assembly without becoming a party to the following activities: (1) Contribution of American funds raised by taxation of American properties to enforce the provisions of the Peace Treaties. (2) Responsibility for all acts committed by the Council in the name of the League of Nations, whether the American representative voted or not. (3) Participation in decisions concerning the following political questions which are constantly before the Council meetings: (a) Administration of the Saar, of Danzig, of Upper Silesia (and now of Memel); (b) Territorial questions affecting Austria, Hungary and Germany; (c) Financial and commercial questions in Austria, Albania and Hungary.[66] (4) Regulation of armaments in Central Powers, by

[65] *Monthly Summary,* April, 1924; p. 62.

[66] A new method of penetration into the political domestic affairs of nations are the conditions accompanying the loans to Austria and Hungary whereby the League acquires certain political rights and duties, creating entanglements of no mean order of complexity.

majority decision; and investigations in Germany, Austria, Hungary and Bulgaria. (5) Supervision of new treaties of the Allied Powers with Germany, Austria, Hungary and Bulgaria. (6) Participation in the exchange of Greek and Turkish populations. (7) Protection of minorities in fourteen sovereign states, in the Free City of Danzig, and in the territory of Upper Silesia.

The foregoing review indicates that these duties are not abstract nor theoretical; they affect the welfare and rights and happiness of millions of people whose compatriots have been admitted to the United States and toward whom that government pursues an entirely different policy and has a different attitude.[67] In its own domains the United States Government is supreme and wholly responsible for the policies pursued; but in Europe it would be one of fifty-five states; or one of ten, acting in a concert of powers, where one vote determines a policy or forces the inevitable compromise.

With the question of the desirability of having some agent, such as the League of Nations, perform these political duties among states in Europe, this discussion is not concerned. With the competence with which the agent may perform the duties assigned by the principals it is less concerned. But with the principle that all of the nations of the world, among them many neutral states and not signatory to the Treaty, should assume political obligations to interfere in the affairs of conquered peoples and with their former dominions never conquered, without these neutral states having had any voice in the making of the Treaties and without power to change these instruments, appears to be a subversion of democratic principles of government. For forty-four states, members of the Assembly, have had put upon them political duties to which their Parliaments have never assented. It matters little that the Council exercises the duties; they are performed in the name of the League of Nations and paid for by taxation of all of the states, but to these states the Council is not responsible for the performance of these duties.

[67] Participation in certain of these duties would be particularly obnoxious to the United States and wholly inconsistent with its policies. The United States would become a party to a policy of expelling races from Turkey while it pursued the contrary policy of assimilating similar races in the United States.

CHAPTER IV

THE CONFERENCE OF AMBASSADORS

When the Treaty of Versailles was signed, creating the League of Nations as the international offspring of the world war, it was the general belief that the Covenant would become the chief instrument for maintaining peace and that the League of Nations would be the mechanism toward which states would turn in political disputes. In fact, during the sessions of the Peace Conference, there was no intimation that any other international organization, in competition with the League, might arise. The more ardent idealists expected to see the old diplomacy and its balance of power disappear in the new diplomacy and through open covenants. It was assumed that under Articles 10-15 of the Covenant, disputes would be submitted to arbitration or inquiry, and whenever the military sanctions of Article 16 were required to bring to terms states offending against the Covenant, all that the League need do would be to call upon its member states for troops, or to establish an economic blockade, and peace was assured.

THE REVIVAL OF THE OLD DIPLOMACY

The League, however, was not made authoritative custodian of international peace. This position the Principal Allied Powers reserved to themselves. These Great Powers were the victors and the chief beneficiaries under the Treaties; they created the new states and laid down the boundaries; they were to receive reparations and regulate the armaments of the Central Powers; they alone possessed the organized military forces to enforce the Treaties of their own making. It was but natural that, having assumed certain obligations, they should become the sponsors for others. The question was what form that sponsorship should take. Three possible courses were open to them: First, to regard the Treaties of Peace as their own handiwork and to assume full responsibility. In that event they would have guaranteed the new boundaries, been ready to help and protect the new states, and guaranteed protection to the minorities bartered away with the territory. This course would have necessitated a pooling of the military forces of the Allied Powers, and an agreement upon policy and unity of political action; but it would have been simple, direct and honorable. A second alternative was to repudiate openly this responsibility by permitting

the new states to shift for themselves, by leaving to them the protection of their own boundaries, and by refusing to call into action inter-allied troops for post-war purposes. The third alternative was a compromise by which the Principal Allied Powers would retain the advantages and authority, but would delegate to agents the execution of their decisions.

The Great Powers chose the latter course, primarily because under the first course their people were tired of war and could not be depended upon to go forth and fight battles on behalf of strange peoples in far countries; and under the second course their own creations under the Treaties were none too secure for them to abandon.

The chief agents selected by the Principal Allied Powers under the compromise course were three: (1) The Supreme Council, later merged in the Conference of Ambassadors, to execute their political decisions; (2) the Reparations Commission to collect reparations and administer financial questions; and (3) the League of Nations to bring to their assistance the moral and sentimental forces of the world, immensely stimulated by the war and, at its close, without an international objective. This last agent was imperatively necessary, for the Peace Treaties, being in reality punitive measures carrying the seeds of future wars, required a moral façade to divert attention from the operation of these wholly material and practical instruments.[1] This agent was needed to satisfy the world that the war had been fought to save democracy and to divert attention from such failures as self-determination, the preservation of principles of nationality and the protection of minorities. But it was also needed for more important duties, namely, whenever a procedure was laid down in the Treaty

[1] This fact was illustrated in the Italo-Greek Dispute. The British Foreign Office supported Viscount Cecil in one policy at Geneva; but Marquis of Crewe in Paris, being unable to have that policy adopted by the Conference, that begun in Geneva was abandoned for the one favored at Paris. (See p. 224.) On this dispute, the *"Japan Chronicle,"* under date of October 11th, 1923, comments as follows:

> "A new power has arisen which supports strength and penalises weakness. The Ambassadors' Council is the real League of Nations today. No doubt the Ambassadors are perfectly sincere in their belief that they can manage the world's affairs much better than a set of amateurs in the League of Nations. But to their management is due the war and all the woe that has followed it. That an Ambassador and one stationed in Paris presides over the League Assembly* and informs it of the decision that has been arrived at to stultify it, is the crowning irony."

* Viscount Ishii presided over the Council, not the Assembly, but reported to the Assembly.

which was dubious in character, or doubtful as to outcome, or which required the execution of petty details that might prove unwelcome to sovereign states, an agent of this character would prove useful. Such a moral agent was created in the Council of the League of Nations.

PRINCIPAL AND AGENT

The Conference and the Council are ordinarily regarded as entirely independent bodies, notwithstanding that representatives of the foreign offices of the Principal Allied Powers are members of each body and receive instructions from the same offices and must carry out a harmonious policy. An examination of the Versailles Treaty, however, indicates that these two bodies are inseparably connected with the same transactions and that the failure of one to perform the duties laid upon it makes success doubtful by the other body. In these transactions provided for in the Treaties of Peace the function given to the Allied Powers acting as the Conference of Ambassadors is that of principal, possessing the authority and power, while that assigned to the League Council is that of agent executing the orders given by the Conference, as prescribed in the Treaty. The following are instances:

The Principal Allied Powers determine boundary lines, but wherever they could not be justified by any of the ordinary historical, ethnographic or economic principles, they left the matter for their agent, the Council, to justify to public opinion. They laid down the rules which were to govern their agent, leaving it little discretion and no voice of its own in the performance of these duties. Illustrations are Eupen and Malmedy, Danzig and the Saar, and later Upper Silesia. In other plebiscite districts, as Schleswig and East Prussia, possessing strategic and industrial importance of a secondary degree, the Principal Allied Powers did not entrust the matter to an agent.

The Principal Allied Powers, in the fixing of new boundaries, created stupendous minority questions. Millions of people were suddenly transferred to a foreign authority which did not speak their language and which had no sympathy with their customs, traditions, religion or institutions. Having created this situation, the Allied Powers called in their agent, the Council of the League, to present to the world the responsibility of protecting minorities which, however, could not extend to the rectification of boundaries. In this instance, however, the principals gave the agents much responsibility and no authority which would transgress the sovereignty of the countries receiving these minorities.

The Principal Allied Powers have retained control of the armaments of the defeated powers. But foreseeing that public opinion might not always sanction this control and intrusion into the domestic affairs of a state; also that the states themselves might some time reassert their right to self-defense, the principals provide that their agent, the Council, might have the right of investigation in any of the Central Powers upon a majority vote of the members of the Council. With fifty-four states as members of the League (although forty-four of them have no voice in authorizing or prescribing the terms of the investigation), there will be little moral opinion left outside to withstand the executive right within the League to perform these duties.

The Peace Treaties, although they created a Council with arbitral functions and authorized a Court with judicial functions, set up an elaborate system of Mixed Arbitral Tribunals between each of the Allied Powers and each of the Central Powers. These tribunals have been established to deal with all questions within their competence under Sections III, IV, V and VII of Part X of the Treaty of Versailles;[2] and in addition with all questions arising from contracts concluded before coming into force of these treaties, excepting only those questions which fall within the jurisdiction of the national courts of the Powers. The decision of these tribunals is final. This system of Mixed Arbitral Tribunals removes from the competence of any other body a large class of questions which are decided by an arbitral system directly responsible to the Allied Powers.[3] But in the event that the Principal Allied Power which appoints one member and the country concerned which appoints the other cannot agree upon the third member who is to be chairman, then the Council of the League is to be called in to make the appointment. Since the principals control the agent, this chairman must necessarily be satisfactory to them.

The new boundary lines created new divisions of waterways; they also created ill will among peoples and states which had hitherto negotiated agreements among themselves for their control. Rivers were internationalized by the Principal Allied Powers, and under their directions conventions are to be drawn up. These become effective with the approval of the League of Nations. There is no provision for any suggestions or recommendations to be made by the League. Whereas its moral sanction seems to be required, its practical inde-

[2] These sections deal with debts, property rights and interests and industrial property.

[3] Competence of Mixed Courts of *Treaty of Versailles*. Dr. Carl Strupp, *Am. J. Int. Law*, October, 1923; p. 661.

pendent advice is not sought, and it is nowhere stated on what grounds the League may decline to sanction these conventions. If the precedent established in the transfer of Eupen and Malmedy is followed, the Council will constitute itself the League, and will validate these conventions as a matter of form.

THE ORGANIZATION OF THE CONFERENCE

The Principal Allied Powers, however, inherited under the Treaties a number of political responsibilities which they entrusted to quite a different kind of agent. They were authorized to delimit existing boundary lines, and to lay down boundary lines not yet determined; they held joint title to immense territories;[4] and they were to draft conventions of various kinds. Political questions of an unprecedented order thus arose between new and old states. In addition, the Treaties provided for a variety of commissions—reparations, military and naval, mixed and delimitation commissions being among the many. The administration of these bodies was a highly specialized responsibility and the Great Powers found themselves in need of a highly trained Secretariat immediately obedient to their will to execute their orders. The Conference of Ambassadors was, therefore, created to act as the political representative of these Powers.

Before the war a body existed, called by various names, usually the Council of Ambassadors, through which the balance of power was exercised. It was, however, an informal and loosely knit-together body, compared with the present organization. Preceding the Armistice, there had been a Council of Ambassadors which did much to direct the strategy of the World War. This organization was absorbed by the Supreme Council and, with the signing of the Peace Treaties, it was hoped that this body, too, would cease to function. In the Supreme Council, the smaller powers were treated as a group in the representatives they were allowed to send, M. Clemenceau taking the position that the Powers furnishing millions of service men should be the dominating factors and their influence was not to be weakened by a superior numerical representation from smaller allied and associated states.

The present Conference of Ambassadors owes its existence, in all

[4] The question of mandates is the responsibility of both the League and the Principal Allied Powers, the former having general supervision, and the latter possessing the title to the territory and exercising the mandate. Although many questions have arisen under these powers, they are not included in this discussion as the writer has not visited the mandated countries and is therefore not in a position to present an analysis based upon original sources.

probability, to Mr. David Lloyd George. Unable to secure the adhesion of the United States to the League of Nations, and thus having it share the responsibilities of bringing about European equilibrium, he conceived the idea of submitting questions of a political nature arising from the Versailles Treaty, not to the League Council, where the seat assigned to the United States by the Covenant remained vacant, but to the Conference of Ambassadors, where the American representative could "unofficially observe," and where, perhaps, step by step, the United States would be drawn into a closer commitment to European affairs.

Considering the importance of its work, and the gravity of its decisions, it is amazing how very little is really known about the Conference. Its procedure is obscure, and it acts silently upon the matters committed to its jurisdiction. There is no annotated Treaty of Versailles, indicating the manner in which its provisions have been interpreted by this body, and there appears to be no public record of its decisions.

It is even denied that the Conference of Ambassadors is an organization. Members of the League Secretariat state that it is an informal gathering of the Ambassadors of the Principal Allied Powers from time to time to discuss matters affecting the Peace Treaties. This impression does not coincide with that given at the Quay d'Orsay in Paris, where the Conference has its headquarters and employs probably the most highly skilled Secretariat in the world. For the Conference has now acquired what it apparently did not have before the war. Formerly, it sat in Paris, London, Brussels or other capitals of Europe; but it now has a permanent home in Paris, where it is fully equipped to undertake its duties under the Principal Allied Powers. Being a smaller body, it does not convene in the *Salle de l'Horloge*, where the Peace Conference held its sessions in 1919, but meets in a smaller but spacious room opening out from it on the rear. It uses a formal letterhead with the inscription: "Conference of Ambassadors—Office of the President"; and its communications have been signed by "Jules Cambon, President," or "Poincaré."

At the sessions, M. Cambon sits as presiding officer, together with the Marquis of Crewe, British Ambassador; Baron Avezzana, Italian Ambassador; Myron T. Herrick, the American Ambassador (and in his absence, Sheldon Whitehouse, Chargé d'Affaires), and Viscount Ishii, the Japanese Ambassador. No representative of small states is included. These Ambassadors act (or observe) under instructions from their foreign offices. Whenever there is a unanimity of

opinion, the question is settled, notwithstanding protests of smaller and weaker states to the contrary. Whenever such unanimity is lacking, there is delay, and occasionally when the deadlock continues, the dispute may be referred to the League.

DOMINANCE OF THE CONFERENCE

For the most part the Council has been content with its subordinate role as agent. In the Eastern Galician, Albanian and Burgenland controversies, when they were submitted by one of the parties, it merely passed the question on to the Conference when informed that this body had the matter under consideration. In the Albanian dispute the Council was content to assist the Conference to execute its decision; in the Polish-Russian and Greco-Turkish wars, the Council deferred to the Supreme Council; and in the Italo-Greek dispute, when it attempted to assert independence, it was promptly put in its place. In this connection it is not without interest to recall that the only disputes which the Council has finally settled have been submitted to it by the Conference or by one of the Allied Powers; while in disputes submitted by member states, it has been unable to solve the problem, either because of disagreement among its principals or their unwillingness to act through the Council on behalf of the disputants. Thus, in the invasion of Persia, the Council did not act, for Great Britain preferred intervention; in the complaint by the Hedjaz, France desired to settle the controversy; in the Nationalities Decrees of Tunis and Morocco, the parties preferred to settle the controversy by direct negotiations.[5]

The sanctions of the Conference are military; for there are behind them the armies and navies of the Allied Powers. Small states engaged in controversies, therefore, accept the decisions of the Conference through fear; whereas they evade the Covenant with impunity. It is only when the Allied Powers are hopelessly divided that such states take matters into their own hands. But this is rare, for it is also an established practice that whenever one of the Allied Powers decides to act alone, no other Power interferes, nor does the Council do so, even though it may be believed and even argued that the Peace Treaties are being violated.

Being a political body, the decisions of the Conference cannot be subjected to review by the Permanent Court of International Justice; and when the question is legal in its inception and the Court has

[5] For details of disputes consult the various chapters.

acquired jurisdiction, it must limit its consideration or surrender it, upon demand to the Conference of Ambassadors, whenever the legal aspects become submerged in political questions. Although the League of Nations exists by virtue of a written Covenant and the Permanent Court of International Justice by reason of a written Protocol, still they bow to the will of the vaguely and indefinitely constituted Conference which has no constitution authorizing its existence, and which has no legal or visible right to the functions of government.

COMMENTARY

Under the terms of the Peace Treaties, and so long as they endure, there is room for but one dominant authority in Europe. That authority is the Principal Allied Powers. When they shall cease to act jointly, a different order will emerge. Now it is for them to choose their agents. They have elected that all important disputes shall be settled by the Conference of Ambassadors; and it is by their will and their will only that the Council may settle such a dispute. The rule of unanimity is sufficient at all times in the Council to prevent any action of which they do not approve.[6]

There is scarcely a dispute which can arise in Europe which the Conference cannot bring within its jurisdiction. Russia and Turkey alone, not being signatories to the Peace Treaties nor members of the League, escape the extension of its power.

The old diplomacy is re-established within the Conference, where the Ambassadors execute the will of the foreign offices of the Principal Powers; and in the Council, where other representatives of these offices execute the will of their principals. In all matters the Conference takes precedence and it is to that body that the preservation of peace is entrusted under the present order.

To the argument that the League of Nations constitutes the only international machinery for settling disputes, the present organization of the Conference offers a denial in fact, in authority, in scope and in competence; for it alone has the power to make final decisions and to employ law and force to execute them. It does not advise nor recommend; it decides and acts.

[6] Chap. XXXIV, for statement of Premier MacDonald concerning the work and future of the Conference of Ambassadors, in answer to inquiries in Parliament.

CHAPTER V

THE TRUSTEE OF THE SAAR BASIN

The Saar Basin lies north of Alsace and Lorraine, separated from these districts by no natural boundaries on the surface of the earth, but by the boundaries of the coal basin under the surface. The territory covers about 2000 square kilometers and has 700,000 inhabitants, purely German. The largest town is Saarbrücken with over 100,000 inhabitants and important iron and steel works. The chief source of prosperity is coal, the mines yielding ten to eleven million tons yearly. Historically and ethnically the Saar Basin is German. During the reign of Louis XIV, and again under Napoleon I the territory was occupied periodically by the French, but in 1815 it was definitely returned to Germany and held until the Treaty of Versailles was made.

The question of sovereignty over the Saar Basin caused serious differences in the Peace Conference. The French claimed possession of the territory as compensation for the destroyed coal mines of northern France. Since the historical and military grounds brought in support of this territorial claim were rejected by the other Allied Powers, it became evident that a compromise would have to be effected, giving France possession of the mines without transferring the territory. The situation was saved by making the League of Nations trustee over the Saar Basin. This act "probably provides the best justification of President Wilson's insistence that the League should form an integral part of the Treaty." [1]

The Saar Basin constitutes a practical test of the capacity of the League of Nations to govern and is the most significant revelation of the competence and character of the Council. The record is a narrative of the transformation of an ideal into a reality and, as such, each consecutive step in that development is of importance to a knowledge of what may be expected from the League as an administrative organization.

TREATY PROVISIONS

The Treaty of Versailles is the constitution by which the Saar Territory is to be administered until the plebiscite is held in 1935.[2] It presents something new in the matter of constitutions, for this unit of racial, linguistic and economic homogeneity is divided among three incongruous governing groups, as follows:

[1] *A History of the Peace Conference of Paris,* Vol. II; p. 183.
[2] *Ibid.;* p. 134.

To France were granted the following rights: (1) To work or lease the mines without restriction; (2) to exercise complete liberty in the distribution, dispatch and sale prices of the product of the mines (subject only to a specified supply to the Saar inhabitants); (3) to control the customs regime, including all imports and exports; (4) to circulate French money and to use it in matters connected with the mines; (5) to establish and maintain, as incidental to the mines, primary and technical schools for the miners and their children, the instruction to be given in the French language; and (6) to maintain and establish homes, hospitals, dispensaries, charitable and other institutions for workmen.

To the inhabitants were given the following guarantees: (1) No modification of existing laws in force on November 11th, 1918 (other than war regulations), without consultation with the elected representatives of the inhabitants of the Saar Basin; (2) protection under the German insurance scheme; (3) continuation of civil and criminal courts; (4) no imposition of new taxes without previous consultation with the elected representatives of the inhabitants; (5) no interference with the existing nationality of the inhabitants of the Saar Basin; (6) the retention by the inhabitants of their local assemblies, their religious liberties, their schools, and their language; (7) those desiring to leave the territory, to retain within the territory their immovable property and to remove their other property, free of duty; and (8) exclusion of military service, whether compulsory or voluntary, with only a local *gendarmerie,* to be maintained for the preservation of order.

To the Governing Commission was given the following authority: (1) All of the powers of government hitherto belonging to the German Empire; (2) administration of all public services; (3) protection abroad of the interests of the inhabitants of the Saar Basin; (4) full rights to use all property, formerly belonging to the Government of the German Empire, other than mines; (5) modification of laws and regulations after consultation with the elected representatives of the inhabitants; (6) fixing of conditions and hours of labor, after taking into consideration the wishes expressed by local labor organizations; (7) administration of courts and the creation of an additional court; (8) power to levy taxes; (9) provision in all cases for the protection of persons and property in the Saar Basin; and (10) to interpret, without right of appeal, all questions arising under these provisions of the Treaty.

To this complex arrangement, concerning which practical statesmen were skeptical, the German Government objected, and the provisions of the Treaty were accepted after assurances had been given concerning the Governing Commission. These are contained in the reply of the Allied and Associated Powers to the observations of the German delegation to the Peace Conference in the form of a covering letter to Articles 45-50 and to the Annex of the Treaty to reassure Germany with regard to the Government of the Saar Basin. It stated:[3]

"It is true that the Governing Commission, with which the final control rests, will not be directly responsible to a Parliamentary Assembly but it will be responsible to the League of Nations and not to the French Government. The arrangement made will afford an ample guarantee against the misuse of the power which is entrusted to it; but in addition, the Governing Commission is required to take the advice of the elected representatives of the district before any change in the laws can be made or any new tax imposed." * * *

It is, therefore, clear that while the Governing Commission is given the final control, it is *required* to take the advice of the elected representatives before any law can be changed or any new tax imposed.

This interlacing of rights and powers among three groups which had nothing in common was contrary to the known principles of free government. The scheme gave control over the income and resources of the territory to one foreign power, while it placed the workers who produced this wealth for such taxation under the League, in which the chief beneficiary, France, was a factor, in that it could control all acts therein by a negative vote. It provided for two parallel educational systems in different languages, although the people spoke but one; it authorized two official languages; it provided for a local *gendarmerie* and local courts and at the same time the allocation of the mines made it possible for an army of occupation and courts-martial to prevail within the same territory. Under these conditions, the French Mines Commission, the inhabitants, and the League of Nations were expected to produce a system of impartial government which would execute the mandate of the Peace Conference.

THE LEAGUE OF NATIONS AS TRUSTEE

The responsibility for the success of this governmental experiment was placed squarely upon the League of Nations as a body.[4] Chap-

[3] *Official Journal,* May, 1922; p. 411.
[4] Chapter II, Annex to Arts. 45-50, *Treaty of Versailles.*

ter II of the Annex to Articles 45-50 of the Treaty of Versailles provides that the government of the Saar Territory shall be entrusted to "a commission representing the League of Nations"; and that it shall consist of five members, as follows:

"The Governing Commission provided for by paragraph 16 shall consist of five members chosen by the Council of the League of Nations, and will include one citizen of France, one native inhabitant of the Saar Basin, not a citizen of France, and three members belonging to three countries other than France or Germany.

"The members of the Governing Commission shall be appointed for one year and may be re-appointed. They can be removed by the Council of the League of Nations, which will provide for their replacement.

"The members of the Governing Commission will be entitled to a salary which will be fixed by the Council of the League of Nations, and charged on the local revenues.

"The Chairman of the Governing Commission shall be appointed for one year from among the members of the Commission by the Council of the League of Nations and may be re-appointed.

"The Chairman will act as the executive of the Commission."

It will be noted that the Commission represents the whole League, although the executive powers are entrusted to the Council; also that the chairman is the key to the entire administrative scheme, as he is also to be the executive under the Treaty.

In accordance with the powers thus conferred upon it, the Council, at a meeting held on February 13th, 1920, appointed the following members of the Commission: M. Rault (France); Herr von Boch (Saar); Major Lambert (Belgium), and Count von Moltke-Huitfeldt (Denmark). The Council then appointed M. Rault as chairman, thus placing the executive administration of the Saar under France.[5] The fifth member of the Commission, Mr. Waugh (Canada), was appointed later by the Council and did not arrive for several weeks.

These appointments raised a storm of protest and were criticized as being partial to France.[6] It was pointed out that it was clearly the intention of the Treaty that the three members were to hold the balance of power between the French and German members, and that this intention had been frustrated by the appointment of a Governing Commission of more than doubtful neutrality; and of a chairman wholly partial to France. In a report, presented by M. Caclamanos

[5] *Official Journal,* March, 1920; p. 49.

[6] Not only was the Belgian Member partial to France, but the Danish Member had been proposed by the French Government and was the son of a former Danish Minister to France.

(Greece), *rapporteur*, to the Council on February 13th, 1920, and approved, these appointments were justified on the ground that the economic development and prosperity of the population depended largely on the assistance of the French Government, and that these rights would be exercised by the French Government in more complete accord with the Governing Commission, if its chairman were of French origin.[7]

The violation of the spirit of neutrality, expressed in the Treaty, was not limited, however, to the personnel of the Commission, nor to the nationality of the chairman, for the report of M. Caclamanos also contained a passage on the retention of French troops in the Saar, reading as follows:[8]

"It will be its duty [the Governing Commission] by the terms of paragraph 30, to provide in all cases for the protection of persons and property in the Saar Basin. Consequently it will have the power to demand the maintenance or return of all or a part of the troops called up to preserve order if necessary till the establishment of the *gendarmerie* of the Saar, as provided for in paragraph 30." [9]

Although the duties of the Governing Commission were defined by the Annex to Articles 45-50 of the Treaty, the Council laid down the following principles for the guidance of the Commission:[10] (1) It is responsible to the League for the execution of its duties in accordance with the terms of the Annex. (2) The Commission will have no interest except the welfare of the people of the territory of the Saar Basin. (3) Decisions of particular importance, such as in paragraph 33 of the Annex (being matters of interpreting the Treaty), must not be taken except in the presence of all the members of the Commission. (4) The Commission shall report to the Council in order to keep the League informed on all questions of interest. At the same time, the Council

[7] *Official Journal*, March, 1920; p. 46.
M. Rault has appointed M. Morize Secretary-General of the Commission. The latter also represents the French Government in the Saar Basin on questions of French taxes—and therefore serves both the League and France and acts as the representative of France on the Commission in the absence of M. Rault. The chairman immediately opened an office in Paris.

[8] *Ibid.*, March, 1920; p. 47.

[9] In a session held on June 30th, 1921, the Council reaffirmed and approved of this position in a report, submitted by M. Wellington Koo in connection with complaints made to the League regarding the continued presence of French troops in the Saar; and on February 1st, 1923, it reiterated its position. (*Official Journal*, September, 1922; p. 683; and March, 1923; p. 230.)

[10] *Official Journal*, March, 1920; p. 50.

approved of the following principle laid down in the report of M. Caclamanos:[11] The League, having so many responsibilities, "should not go too deeply into details, as it would run the risk of becoming too material and of compromising the lofty moral authority which it should preserve as the Supreme Court of Appeal."

THE GOVERNING COMMISSION

On February 21st, 1920, the Governing Commission put into operation the train of events, made inevitable by the character of its personnel and chairmanship. At the suggestion of the Chairman, the duties were finally divided among the members, as follows:[12]

French Chairman	Belgian Member	Danish Member	Canadian Member	Saar Member
Foreign Affairs	Public Works	Education	Finance	Agriculture
Interior	Railways	Public Worship	Supplies	Public Health
Public Safety	Posts and Telegraphs	Justice		Social Welfare
Commerce				
Industry and Labor				
Social Insurance				

The duties of the Canadian member were originally given to the Saar representative, but upon his arrival his objections necessitated a "swap" between himself and the Saar representative.

At the time this assignment of duties was made, the Chairman announced that each commissioner was to be supreme in the departments under his control and that the Commission as a whole would deal only with matters which were of a delicate nature. It will be observed that this division of duties and segregation of powers, which was clearly an *interpretation* of the Treaty provisions, was made before the Canadian member arrived; and was in direct violation of the instructions of the Council to the effect that important action was to be taken only by the full Commission. By this act, every authority of the first class was lodged with the three Commissioners, alleged to be partial to France.[13] The Chairman took control of the important departments of foreign and domestic affairs, public safety, commerce,

[11] *Official Journal;* p. 48.

[12] *Ibid.,* May, 1920; p. 101; June, 1920; p. 192; and August, 1923; p. 910.

[13] The general secretariat which administers the affairs of the departments under M. Rault, M. Lambert and Count von Moltke is French.

industry, and labor; in combination with the Belgian member, his power extended over public works, railways, posts and telegraphs; and in combination with the Danish member over education, public worship and justice. During the inquiry, conducted later by the Council, it appeared that the Chairman had exercised control over twelve of the seventeen departments, assigned to the various members of the Commission. This procedure removed from the general supervision and knowledge of the whole Commission all matters concerning these important departments, and excluded the member from the Saar Basin from discussions or decisions concerning matters which vitally affected the welfare of the inhabitants of the territory.[14]

It will be observed that the Council, in effect, gave to the Saar a French administration; that the French chairman reserved the duties of the Commission to the majority friendly to France; that the Council authorized the Commission to retain the French army; thus rendering the League of Nations impotent to fulfill its duties as trustee, as set forth by itself in the Resolution of February 13th, 1920; and created a Governing Commission not representing in fact the League of Nations but the French Republic.

FRENCH TROOPS IN THE SAAR

"There will be no military service, whether compulsory or voluntary, in the territory of the Saar Basin, and the construction of fortifications therein is forbidden. Only a local *gendarmerie* for the maintenance of order may be established. It will be the duty of the Governing Commission to provide in all cases for the protection of persons and property in the Saar Basin." [15]

The inhabitants contended that the continued presence of French troops was in violation of this paragraph. The German Government protested formally to the League on February 15th and on April 7th, 1921, against the presence of these troops. The Chairman of the Governing Commission, however, held that the Treaty laid upon the Governing Commission the duty "to provide in all cases for the protection of property and persons in the Saar Basin." He pointed out that in paragraph 33 of the Annex the Governing Commission had the power to decide all questions arising from the interpretation of the provisions and that it was entirely within the power of the Commission to use any methods it saw fit. But his strong point was that the

[14] During the inquiry conducted by the Council, the Chairman stated that each Commissioner was absolute master in his own particular ministry, and received such correspondence as related to his particular affairs; but general correspondence with the Chairman was not sent to the Commission, as a rule.

[15] Paragraph 30, Annex to Arts. 45-50, *Treaty of Versailles.*

Council of the League in February, 1920, had expressed the view that the Governing Commission might avail itself of French troops. In further opposition to the removal of the troops, he stated that the substitution of a local *gendarmerie* would require legislative and administrative reforms; that it was impossible to recruit sufficient men from the ranks of labor and 75% of the male inhabitants were such workers; that a *gendarmerie* composed of natives had the drawback of being of doubtful reliability in times of emergency; and that the cost would be a severe drain upon the territory. As the Chairman was in sole control of public safety, his opinion was final.[16]

M. Wellington Koo (China) was requested to make a report. On June 20th, 1921, a report was rendered,[17] containing the conclusion that there seemed to be no reason why the Council should modify its attitude taken in the decision of February 13th, 1920. This conclusion was approved by the Council.[18]

On August 23rd, 1922, the German Government again protested against the continued presence of French troops on the ground that they were performing special services for the Governing Commission, namely: reporting upon the first and fifteenth of each month on the spirit of the population; maintenance of a list of prominent persons in the towns; investigations into personal and private affairs of inhabitants, including political opinions; and discreet supervision of the reports of local civil authorities and verification of their reports. It was alleged that these duties were authorized in a general order, issued at the beginning of 1921.[19]

The Council forwarded this communication to the Chairman of the Governing Commission, who denied issuing any such general order,

[16] *Official Journal,* September, 1921; pp. 683-685. [17] *Ibid.*

[18] In his report, M. Wellington Koo pointed out that these troops were not a force of occupation, but garrison troops, distinct from the French army in that they must comply with requests made by the President of the Governing Commission. Their presence, he said, does not constitute the establishment of a military service in the Basin contrary to the Treaty, as the Treaty nowhere restricts the Commission as to the means it should employ to keep order. He also explained that the Council, by its adoption of the report on February 13th, 1920, had expressed the view that the Commission would have authority to avail itself of the support of French troops. But the Council, on June 20th, 1921, went a step further. It stated that the report to the Council of February 13th, 1920, does not contemplate the maintenance of a foreign garrison as a permanent feature of the organization of the Saar, but, on the contrary, lays down the policy of dispensing with the support of foreign troops as soon as the development of the local *gendarmerie* enables the Governing Commission to decide that such support may be dispensed with. (*Official Journal,* September, 1921; pp. 683-685.)

[19] *Official Journal,* December, 1922; p. 1487.

but he did not deny specifically that such services were being rendered.[20] M. Tang Tsai-Fou, successor of M. Wellington Koo as Chinese member of the Council, was requested to make a report to the Council. Upon the submission of his report, on February 1st, 1923, the Council reaffirmed its position of February 13th, 1920, and of June 20th, 1921, and requested the Governing Commission to adopt such measures as it thought suitable for increasing the strength of the local *gendarmerie*. It also passed the following resolution:[21]

"The Council, having noted the replies of the Governing Commission on the question of the troops and of the French *gendarmerie*, and in view of its decision of today's date [as above noted] regarding the local *gendarmerie*, agrees that the French *gendarmerie* should be employed for the purpose of policing the French troops."

In a letter dated March 8th, 1923, the Chairman of the Governing Commission outlined a plan for developing the local *gendarmerie*, beginning with raising the number by 200 in the fiscal year, April 1st, 1923-March 31st, 1924; [22] whereupon the Council requested M. Tang Tsai-Fou to make a report. At its meeting on April 23rd, 1923, the Council approved the report and adopted the following resolution:[23]

"The Council * * * (a) Notes the program of the Saar Basin Governing Commission to enlist and train during the financial year 1923-1924, 200 new *gendarmes*, thereby increasing the strength of the local *gendarmerie* from 155 to 355;

"(b) Requests the Governing Commission, before adopting its budget for the financial year 1924-1925, to submit, for the consideration of the Council, its program for the increase of the local *gendarmerie* during that period."

In July, 1923, there were approximately 2200 soldiers in the Saar Territory, of which 1800 were available for duty; at times of strikes, however, the number was increased to 7,000.[24] In the French equipment reports the number of soldiers estimated for the Saar is 8,000;[25] and the French budget for 1924 contains an item of 24,000,000 francs for the support of Saar troops.[26]

The continued presence of the French army, therefore, depends upon the Chairman's interpretation of the Treaty; although the interpretation is vested in the Commission and not in the Chairman, who has

[20] *Official Journal*, December, 1922; p. 1489.
[21] *Ibid.*, March, 1923; p. 365.
[22] *Ibid.*, April, 1923; p. 424.
[23] *Ibid.*, June, 1923; p. 682.
[24] *Ibid.*, August, 1923; p. 915.
[25] Chap. XXXVI, also *Records of the Third Assembly, Minutes of the Third Committee;* p. 99.
[26] *Le Temps*, Nov. 14th, 1923.

usurped that right without protest from the Council. The question naturally arises: If the Saar Basin, in addition to its local *gendarmerie,* required an international police to keep order, why were not the members of the League called upon to supply it and thus maintain the spirit of neutrality of the Treaty? That such a police force would have been possible to raise is demonstrated by the experiment made in the Polish-Lithuanian Dispute.[27]

COURTS-MARTIAL

"The civil and criminal courts existing in the territory of the Saar Basin shall continue. A civil and criminal court will be established by the Governing Commission to hear appeals from the decisions of the said courts and to decide matters for which these courts are not competent. The Governing Commission will be responsible for settling the organization and jurisdiction of the said Court. Justice will be rendered in the name of the Governing Commission." [28]

With permission granted by the Council to maintain French troops in the Saar territory, it was inevitable that French courts-martial should exist. In notes dated February 15th and April 7th, 1921, the German Government protested to the League against the jurisdiction exercised by the French army over inhabitants of the Saar, basing its protest upon the above paragraph. The Council requested M. Wellington Koo to make an inquiry. In his report of June 20th, 1921, he reached the conclusion that the evidence submitted by the German Government and the Chairman of the Governing Commission revealed no reason for the Council to modify its attitude expressed on February 13th, 1920, in permitting troops to remain in the Saar territory. He based this conclusion upon the fact that, according to the Treaty, justice in normal circumstances can be exercised only in the name of the Governing Commission "in accordance with the law in force there on November 11th, 1918, subject to modification after consulting the elected representatives of the inhabitants, and only by the Courts named in paragraph 5." It followed, therefore, he stated, that courts-martial were contrary to the Treaty. He justified their existence, however, as follows:[29]

"In laying down the above general principles, however, it is necessary to recognize that, in an emergency in which the Governing Commission has found it necessary to use the support of foreign troops, it may have been impossible to secure the proper working of, or to rely upon, the ordinary tribunals. In such an emergency the Commission, as the supreme executive

[27] Chap. XI; p. 254. [28] Par. 25, Annex to Arts. 45-50, *Treaty of Versailles.*
[29] *Official Journal,* September, 1921; p. 685.

authority in the Territory, and as charged by the Treaty of Versailles with the duty of protecting persons and property, could hardly be denied the right of giving jurisdiction so far as it considered it necessary, to courts-martial constituted by the foreign garrison."

The *rapporteur*, however, failed to define "normal circumstances," or to describe the particular emergency which appeared to justify the continuation of the troops. These conclusions were transmitted to the Governing Commission for its guidance and a copy was sent to the German Government. On June 28th, 1921, the Governing Commission, by decree, defined the competence of the French courts-martial, then admittedly functioning in the Saar territory. The decree provided that the local courts should have jurisdiction over civil and criminal actions; but that the courts-martial should have jurisdiction over the soldiers belonging to garrison troops; over civilians guilty of espionage; over crimes of complicity between civilians and soldiers (though by agreement between the Chairman of the Governing Commission and the Commandant of the Army, they could elect either the civil court or a court-martial); also during a state of siege.[30]

This decree *recognized* the French courts-martial as an integral part of the machinery of justice in the Saar territory; it was promulgated without consultation with the inhabitants (as provided in sub-paragraph 2 of paragraph 23 of the Annex); and was immediately objected to as being a violation of the Treaty, as it was alleged to be a modification of existing laws.

M. Tang Tsai-Fou was requested by the Council to make an inquiry into this matter. In his report, submitted on February 1st, 1923, occur these two passages:[31]

"As regards the second type of exceptional cases, i.e., crimes or misdemeanours involving espionage, defence against espionage is a primary necessity for troops, and civil court judges, other than the national judges of the troops, could not appreciate the exact importance of such acts; moreover a trial of this nature must often be carried out with special precautions to prevent information of a military character being divulged.

"The recognition of the competence of military courts in cases where martial law has been proclaimed only amounts to the application to the Saar Territory of the common law of modern nations in times of crisis. Moreover, the decree does not give courts-martial a general competence in penal matters under such circumstances, but leaves it to the Governing Commission to determine this competence at the time of the proclamation of marital law." [32]

[30] *Official Journal*, October, 1921; p. 843. [31] *Ibid.*, March, 1923; p. 368.
[32] For defense of courts-martial by the Chairman see *Official Journal*, January, 1923; p. 88.

The League Council refused to deal with the question of the *legality* of these courts-martial on the theory that no wrong was being done to justice and to right unless a case was reported. That the establishment of such courts was a violation of the Treaty was apparently none of its concern, for it said:[33]

"The Council is of opinion that it is unnecessary for it to discuss the question of courts-martial, as, since the adoption of its resolution of June 20th, 1921, no case has arisen." [34]

It will be observed that although the only additional court contemplated in the Treaty is provided for in paragraph 25 of the Annex, the Chairman tolerated courts-martial, and the Commission legalized them by passing a decree defining their authority and the Council sanctioned the proceedings. In these courts-martial justice was rendered in the name of the French Government in violation of the Treaty, which specifies that justice shall be rendered in the name of the Governing Commission.[35]

EXPULSION OF INHABITANTS FROM THE SAAR

"The laws and regulations in force on November 11th, 1918, in the territory of the Saar Basin (except those enacted in consequence of the state of war) shall continue to apply." [36]

On March 31st, 1921, the German Government protested against the expulsion *en masse* of inhabitants from the Saar Basin, as effected by the French military authorities after the proclamation of a state of siege during a strike in August, 1920. Also, it was alleged, when the state of siege was lifted, that many of the persons expelled were not permitted to return. These objections were based on the ground that these expulsions interfered with the liberty of movement and of residence under existing laws, not changed by the Governing Commission with the consent of the inhabitants; and that existing courts provided ample procedure to deal with persons disturbing the order and peace of the territory.[37]

[33] *Official Journal,* March, 1923; p. 368.

[34] This question was not included in the inquiry of July, 1923 (see p. 120), and there remains unanswered the query whether a civil decree issued by the Governing Commission defining the powers of the French courts-martial and thus legally recognizing them as part of the administration of justice in the Saar, does not constitute a most flagrant violation of the Treaty.

[35] The Governing Commission has created a High Court at Saarlouis and an administrative Court, in addition to existing courts, without submitting the proposals to the representatives of the people, on the theory that this action in no way interferes with the existence of the present courts, although actions in which the Governing Commission is interested are now tried in its own courts.

[36] Par. 23, Annex. to Arts. 45-50, *Treaty of Versailles.*

[37] *Official Journal,* September, 1921; p. 686.

The facts seem to have been these:[38] In July, 1920, the inhabitants of the Saar called the attention of the Secretary-General of the League to a state of affairs which was likely to lead to trouble, namely, the substitution of French officials for German officials in the civil government. Their appointment was alleged to be in violation of the Treaty, and the League was requested to intervene.[39] This petition remained unanswered. On August 6th, 1920, the German officials published a call to strike if the demands, seventeen in number, including the preservation of Treaty guarantees, were not granted.[40] On the same day, the Governing Commission, in order to break the strike, declared a state of siege which the French army enforced. In that process, over 200 inhabitants were expelled under an order from the "Commander of the Troops of the Saar Territory." The first part of the order read as follows: [41]

"The Commander of the Troops of the Saar Territory, in consideration of a state of siege and under directions issued to us on August 6th, 1920, by order of the President of the Governing Commission of the Saar Territory and in consideration of the fact that [name] is an element dangerous to order and capable of disturbing public peace, hereby orders:

"Article 1. [Name] is expelled to the right shores of the Rhine into the territory not occupied by the Allied armies."

A subsequent article provided for the execution of the order by the chief of the division. M. Wellington Koo was requested by the Council to make a report.[42] His conclusion, as approved by the Council at its meeting of June 20th, 1921, follows:[43]

[38] *White Book of the Saar;* pp. 183-187.

[39] On July 6th, 1923, the British member of the Council requested the Governing Commission to forward a list of the non-German officials in the Saar Basin, arranged according to nationalities. He received a list totaling 73. But to the list was appended the following memorandum: "The requirements of an international administration amply justify the existence of a bi-lingual subordinate staff, the greater part of which was recruited in Lorraine." As there are about 12,000 officials in the Saar Basin under the Governing Commission, it might be of interest to know precisely where each was born and when he was appointed. *(Official Journal,* September, 1923, p. 1064.)

[40] *White Book of the Saar;* pp. 187, 213-215. [41] *Ibid.;* p. 217.

[42] It will be observed that, while all of the disputes arising in the Saar Basin involve highly technical questions of jurisprudence, peculiar to democratic countries and western civilization, the Council has been content to rely in each instance upon the report of *rapporteurs* from the Far East. Whatever their high qualifications in Eastern civilization, they can hardly be expected, in a hurried and necessarily superficial examination of these questions, to appreciate the significance of the special points of equality and justice which are the pride of Roman and Anglo-Saxon systems of jurisprudence.

[43] *Official Journal,* September, 1921; p. 687.

"The Governing Commission must have discretionary power to take all necessary measures, in moments of extreme emergency, for the preservation of persons and property in the Saar Basin. A distinction must, of course, be drawn between the state of siege which may result from such extreme emergency, and the position after the return to normal conditions. The Council may desire to recommend that the Governing Commission should institute a renewed inquiry into the cases in which a decree of expulsion is still in force against individuals, in order that such cases may be restricted within the narrowest limits consistent with the maintenance of order in the Saar Basin.

The results of such an enquiry, giving the facts of each individual case in which expulsion is still maintained, should be submitted to the Council of the League of Nations for its information at any early opportunity." [44]

It will be observed that the French military authorities expelled inhabitants of the Saar, not only from territory under the administration of the League, but from contiguous territory under the control of the Allied Armies, the order for such expulsion being issued in the Saar Basin with the approval of the Chairman and condoned by the Council of the League.

DEFINITION OF INHABITANTS

"The present stipulations will not affect the existing nationality of the inhabitants of the territory of the Saar Basin. No hindrance shall be placed in the way of those who wish to acquire a different nationality, but in such case the acquisition of the new nationality will involve the loss of any other." [45]

On June 15th, 1921, the Governing Commission issued a decree, defining an inhabitant of the Saar Basin and prohibiting expulsions in the future. This decree defined an inhabitant as one, who, having lived in the territory for six months, had been (a) born there and whose father was domiciled there at the time of his birth; or (b) whose father at the time of his birth had lived there ten years previously; or (c) persons who on November 11th, 1918, were domiciled there. The decree then defined the conditions under which persons could acquire the quality of inhabitants and the manner of application, also the conditions under which such rights would be forfeited. Article 6 of the decree provided that in future no such inhabitant should be expelled from the Saar Basin.[46]

This decree was objected to by the German Government on the

[44] The published reports made by the Chairman do not appear to contain such information.

[45] Par. 27, Annex to Arts. 45-50, *Treaty of Versailles.*

[46] *Amtsblatt* (official publication of the Governing Commission), No. 9, June 25th, 1921.

ground that it was in conflict with paragraph 27. It was contended that this decree divided the people of the territory into inhabitants and aliens which very materially changed their existing nationality. In his eighth general report to the League, the Chairman of the Governing Commission pointed out that paragraph 27 provides that "no hindrance shall be placed in the way of those who wish to acquire a different nationality"; and interpreted this to mean that facilities should be provided for enabling them to do so. He also stated that the local assemblies of the inhabitants, to which the decree was referred, had disapproved of it on the ground that it endangered the nationality of the German inhabitants in the Saar Basin.[47]

This decree remains in force although it did not have the approval of the inhabitants. The question whether the Governing Commission may pass new laws which have not received the consent of the elected representatives of the inhabitants is regarded by the Governing Commission in the affirmative; and by the inhabitants in the negative. Since the Governing Commission may interpret the provisions of the Treaty, the Council did not consider that it was called upon to settle this question.

It will be observed that this decree created a distinction between the German nationality and the quality of an inhabitant, and it is the latter which will be applied with regard to political rights, especially in matters of voting for local officials, and in the plebiscite of 1935, when the final disposition of the Saar Basin will be made.

FOREIGN AFFAIRS

"It will be the duty of the Governing Commission to ensure, by such means and under such conditions as it may deem suitable, the protection abroad of the interests of the inhabitants of the Territory of the Saar Basin." [48]

On July 7th, 1920, the Governing Commission entrusted this duty to the French Government, when it issued the following decree:[49]

Article 1. "The protection abroad of the interests of the inhabitants of the Territory of the Saar Basin is entrusted to the Government of the French Republic.

Article 2. "The President of the Governing Commission, in charge of Foreign Affairs, is entrusted with the execution of the present decree."

On August 23rd, 1920, the French Government accepted this respon-

[47] *Official Journal*, October, 1921; p. 840.
[48] Par. 21, Annex to Arts. 45-50, *Treaty of Versailles*.
[49] *Official Journal*, September, 1920; p. 375.

sibility in a note to the Governing Commission in which it said that its diplomatic and consular agents were prepared to afford protection to any inhabitant of the Saar Territory, resident in a foreign country.[50] The German Government, on December 31st, 1920, protested to the Governing Commission against this interpretation of the decree, declaring that the "interests of the inhabitants," as used in the Treaty, did not extend to their persons and that German nationals should not be protected abroad by French consular agents.[51] This protest was disregarded and inhabitants of the Saar Territory, who desired passports, had entered upon them the words: *"Protégé of France."*

On January 8th, 1923, the German Government sent a protest to the League of Nations, alleging that the nationals of a country should be protected by their own consular representatives; and requested the League to make an inquiry.[52] M. Tang Tsai-Fou was requested by the Council to make a report, which was adopted on April 23rd, 1923. The report concluded as follows:[53]

"No one appears to contest the legality of the existing situation, under which the protection abroad of the interests of Saar inhabitants is entrusted to France. The German Government claims that many practical difficulties result from this arrangement and proposes a new system to remove them. The Governing Commission deals with the legal aspect of the case and doubts the existence of difficulties which make it desirable to modify the present arrangement."

It will be observed from the above report that the question whether the foreign affairs of the Saar Territory would be administered in an impartial manner for the welfare of the inhabitants appears to have been of no concern to the League; and in the absence of a contest over legality it was not moved to maintain principles of justice.

In a memorandum, prepared by members of the Advisory Council of the Saar Basin, under date of June 2nd, 1923, some of these practical difficulties were set forth, as follows:[54]

"The very disputes which required energetic defense of Saar interests abroad were almost entirely those with France. In most of these cases the Foreign Representation set up by the Governing Commission was an absolute failure. * * * The interests of the Saar Basin came into conflict with the orders of the French Customs Administration and the Inter-allied Commission of the Rhine, which occurred during the last few months as a result

[50] *Amtsblatt* (official publication of the Governing Commission), No. 10, September 9th, 1920.

[51] *White Book of the Saar;* p. 87. [52] *Official Journal,* April, 1923; p. 412.

[53] *Ibid.,* June, 1923; pp. 684-685.

[54] *Memorandum of Political Parties in the Consultative Council of the Saar Basin.*

of the seizure by France of the administration of the German Customs, and of the means of transport in the occupied Rhenish Territory."

It is obvious that in a territory where the inhabitants belong to the nationality of one adjoining country and when the chief industry and the product of their labor belongs to a second adjoining country, that questions affecting their foreign relations will concern both of these countries. A neutral administration would seem to require that neither country should hold the advantage over the inhabitants.[55] The question naturally arises: Why should not the League of Nations have managed the foreign affairs of the Saar Basin and why should not the passports of the inhabitants have read "Ward of the League of Nations" instead of "Protégé of France"?

ADVISORY COUNCIL

"If for general reasons or to bring these [existing] laws and regulations into accord with the provisions of the present Treaty, it is necessary to introduce modifications, these shall be decided on, and put into effect by the Governing Commission, after consultation with the elected representatives of the inhabitants in such a manner as the Commission may determine." [56]

It will be recalled that the Treaty provided that no laws were to be passed and no new taxes were to be levied without consultation with the elected representatives of the inhabitants; and that the note from the Allied Powers interpreted this to mean that the Commission should accept their advice. These were two of the most fundamental guarantees. In the beginning, there was no general body of representatives to consult, so the Governing Commission laid certain matters before the local assemblies. But this was not satisfactory to the inhabitants and, having grown impatient, after a delay of two years, during which time no such general consultative body was established, they passed a resolution on March 18th, 1922, calling a meeting for the purpose of forming an assembly of their own. A copy of this resolution was sent to the League.[57]

On March 24th, 1922, the Governing Commission forestalled this movement by issuing a decree which provided for two bodies, one to be elected by the people; and a second to be appointed by the Govern-

[55] It should be noted in this connection that nationals of the Allied Powers—French, Italian, American, British and others—can travel to the Saar without visés from the Governing Commission or from France, but all Germans from the right bank of the Rhine are required to have a visé from the Governing Commission; for those coming from the left bank of the Rhine the stamp of the Allied officers of the occupied territory is sufficient.

[56] Par. 23, Annex to Arts. 45-50, *Treaty of Versailles.*

[57] *Official Journal,* May, 1922; p. 457.

ing Commission. Part I of the Decree provided for an Advisory Council of thirty members to be elected by equal, direct and secret ballot of the inhabitants, in conformity with the principles of proportional representation. The electors were to form a single body, and all persons of both sexes, over twenty years of age and having the status of inhabitants of the Saar, could vote. The term of office was fixed at three years. The following are the provisions concerning the rights and duties of the Advisory Council:[58]

Article 5. "The Chairman of the Advisory Council shall be appointed by the Governing Commission from among the inhabitants of the Territory fulfilling the conditions laid down in the foregoing article.

Article 8. "Any discussions by the Advisory Council on subjects other than those submitted to it in virtue of the second paragraph of the first article of the present decree and included on the agenda annexed to the order of convocation shall be considered as null and void.[59]

"In particular, all discussions, motions or resolutions tending either directly or indirectly to affect the legal situation created in the Saar Territory by the Treaty of Peace of Versailles or by the subsequent decrees of the Governing Commission shall be null and void, and shall be declared so by a decree of the Governing Commission.

"The budget set up for each financial period shall be communicated to the Advisory Council.

Article 9. "Each member of the Governing Commission may, for matters within its competence, appoint one or several Government Commissioners to present to and discuss before the Advisory Council the proposals which he may have submitted to it.

Article 10. "The Advisory Council shall be convened by the Chairman of the Governing Commission. It shall meet at least once every three months. The decree of convocation shall state the number and nature of the matters which the Advisory Council is called upon to discuss during its meeting."

Part II of the decree created a Technical Committee, consisting of eight members, to be appointed by the Governing Commission. Its duties were to give its views to the Commission upon any matters submitted to it. Article 16 is of special interest, relating to the procedure of the Advisory Committee which the Governing Commission formulates. It provided:[60]

The conditions of application of the present decree shall be determined by subsequent decrees, in particular as regards the compilation of the electoral lists, the date of voting, disputes arising out of elections and the rules of procedure of the Advisory Council and the Technical Committee."

[58] *Official Journal,* May, 1922; p. 415.

[59] A decree making discussions by an official body null and void constitutes a unique contribution to legislation.

[60] *Official Journal,* May, 1922; p. 416.

It will be observed: (1) The Advisory Council was to give its *"views"* on matters submitted to it, not its *advice,* as had been stated in the covering note sent by the Allied Powers. (2) These views were restricted to matters of legislation and taxation, but the Advisory Council could not take these matters up for consideration until they were submitted by the Governing Commission. (3) The right to vote was granted to all persons over 20 years of age, having the status of inhabitants, but membership in the Council was limited to native inhabitants. (4) The Chairman of the Advisory Council was to be appointed, not by the elected body, but by the Governing Commission. (5) The rules of procedure were to be fixed by subsequent decrees and not formulated by the elective body. (6) Any discussions on any subject, other than those submitted by the Governing Commission, were to be considered null and void. (7) All discussions tending to affect the legal situation created in the Saar Basin by the Treaty of Peace or by decrees of the Governing Commission were to be null and void. (8) The budget was to be communicated to the Advisory Council, but this body was not permitted to vote upon it nor to advise concerning it. (9) The Advisory Council was to be convened by the Chairman of the Governing Commission. (10) The Advisory Council was presented with a rival in the Technical Committee.

A copy of this decree was sent to the League Council which, being aware of the storm of protest that had been aroused, prepared to uphold the Governing Commission. On March 26th, 1922, it adopted a report made by M. Wellington Koo, in which it congratulated the Chairman of the Governing Commission upon the liberal spirit shown and expressed itself as thoroughly satisfied with the results.[61] This report pointed out that:[62]

"The League of Nations could not allow the Governing Commission in any way to deprive itself of its powers.[63] It is the duty of the League to see that the Governing Commission is always in a position to carry out its duties in accordance with the Treaty. The Governing Commission could not be permitted, therefore, to set up, in contradiction to the Treaty, a Saar Parliament to which the Commission would be responsible and which could prevent the Commission appointed by the Council of the League from carrying out its duties." [64]

[61] *Official Journal,* May, 1922; p. 382. [62] *Ibid.*; p. 413.

[63] In adopting this report the Council explicitly stated that it could not *allow* the Governing Commission to *deprive* itself of any of its powers. There is lacking throughout the record any correspondingly explicit statement that it could not allow the Commission to *exceed* its powers under the Treaty.

[64] It seems rather a far call between a "Parliament" with legislative powers, as the Anglo-Saxon mind understands it, and an Advisory Council which has no

In spite of the opposition in the Saar Basin to the form of this decree, the election was held on June 25th, 1922, and thirty members were elected. The number of electors, as listed by the Governing Commission, was 356,141, and the number of votes cast was 193,304.[65] The Advisory Council held its first session on July 19th, 1922. The Governing Commission appointed M. Kossman, former member of the Reichstag, as Chairman, who read a message, approved by the Governing Commission. Each of the six political parties, represented in the Council, then requested the right to make a declaration.[66] This request was refused; but so insistent was the demand that the meeting was adjourned in order that the Chairman might consult the Governing Commission. The declarations were then permitted to be read, but on the condition that they were not to be debated nor voted upon. Each one of the party leaders denounced the character of the decree and the limitations placed upon the powers of the Council, demanding the right to elect their own chairman; to formulate their own rules of procedure; also the right of initiative and petition; and the removal of the limitation that only native-born inhabitants should be eligible to membership in the Advisory Council. They further requested that the wrongs complained of to the League be redressed.[67]

It was the subsequent activity of these members, denied the right of appeal to the Governing Commission, which was instrumental in bringing about the inquiry into the Saar Administration, conducted by the Council in July, 1923.

It will be observed that the Advisory Council is not in reality an advisory body, since the Governing Commission has the right to (1) convene the meetings; (2) make up the agenda; (3) appoint the Chairman; (4) nullify discussions and (5) consider or not consider, at discretion, the advice of this body.

SAAR REPRESENTATIVE ON THE GOVERNING COMMISSION

"The Governing Commission * * * shall consist of five members chosen by the Council of the League of Nations, and will include one citizen of France, one native inhabitant of the Saar Basin, not a citizen of France, and three members belonging to three countries, other than France or Germany." [68]

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power to elect its chairman; no right to make its rules of procedure; no right to discuss any matter not submitted by the Governing Commission; no power to express an opinion upon a budget communicated to it; and no right to meet unless called together by an authority outside of its own body.

[65] *Official Journal,* August, 1922; p. 769. [66] *Ibid.,* September, 1922; p. 1044.

[67] For text of declarations see *Official Journal,* September, 1922; pp. 1046-1052.

[68] Par. 17, Annex to Arts. 45-50, *Treaty of Versailles.*

A grave question concerned the right of the inhabitants of the Saar Basin to propose names for their representative to be appointed by the Council on the Governing Commission, this right of other countries which had a national on the Commission being recognized by the Council in its appointments.

It was charged that Herr von Boch, the first member appointed for the Saar Basin, had been the choice of France and not of the inhabitants of the Saar. Even so, he found conditions intolerable and resigned in August, 1920, after six months of service, on the ground that his position had become untenable by reason of the methods of administration.[69] He referred particularly to the manner of transferring Germans in the civil service by demotions and by payment of inferior salaries, and to the appointment of French officials to the more authoritative posts. He urged the League to make an inquiry on the spot as to the methods of administration. The member of the League Secretariat, in charge of Saar affairs, advised against this proposal and recommended the appointment of Dr. Hector to succeed Herr von Boch. His report was adopted by the Council at its meeting on September 20th, 1920, and Dr. Hector was appointed.[70]

In July, 1922, the inhabitants of the Saar Territory protested against the reappointment of Dr. Hector. In September, 1922, they presented to the Council a memorandum in which they asserted that Dr. Hector, as mayor of Saarlouis, had, in 1919, altered a memorandum on economic affairs of the City Council of Saarlouis to the—then not yet established—Governing Commission, into a declaration of loyalty to France. Dr. Hector was thereupon attacked by the press, and called a traitor by the *Saarbrücker Zeitung*. Against the editor of this paper, Dr. Hector brought suit which came before the *Landgericht* of Saarbrücken in March, 1923. Two documents were brought as proof; alleged to have been written without the knowledge of the City Council of Saarlouis. One document was the above-mentioned declaration of loyalty, dated July, 1919; the second was a letter to M. Clemenceau, dated January, 1920. Dr. Hector, under oath, denied all knowledge of the first letter, and stated that he "could not remember" the second.[71] He was at once accused of perjury, but not tried, as it was

[69] Mr. Waugh, the Canadian representative on the Commission, left his office on August 15th, 1923, after his repeated protests against the un-neutral methods used by the Commission and against the usurpation of important duties by the Chairman without consultation with other members of the Committee.

[70] *Official Journal*, October, 1920; p. 400.

[71] Both letters contained declarations of loyalty to France and asked for the good will of France toward the city of Saarlouis.

claimed that, under Article 7, Part I, of the Treaty of Versailles, and Article 16 of the Saar Statute, he was entitled to "diplomatic immunity."

On March 3rd, 1923, counsel for Dr. Hector made a declaration, stating that his client had sworn under oath that he had neither sent, nor personally handed over the first letter to M. Clemenceau. As to his statement that he had not *composed* this letter, he remembered that at the time he had dictated a letter to the City Secretary which might be the letter in question. Whether, and by whom, the letter was translated into French he did not remember. As to the second letter, he remembered to have composed and written it. He, accordingly, withdrew his declaration and corrected his oath. On the same date he resigned from his position on the Governing Commission.[72] It appears, however, that he was permitted to suggest his successor, M. Land, whose appointment the Council confirmed at its meeting on April 23rd, 1923.[73]

It will be observed that the Saar member is appointed by the Council of the League, not on recommendation of representatives of the territory, but arbitrarily; that one of the appointees was forced to resign on a charge of dishonesty and that his recommendation for a successor was accepted by the Council.

THE FRANC

"No prohibition or restriction shall be imposed upon the circulation of French money in the Territory of the Saar Basin. The French State shall have the right to use French money in all purchases, payments and contracts connected with the exploitation of the mines, or their accessories and subsidiaries." [74]

In August, 1920, the first move was made to substitute the franc for the mark. At that time it was ordered that coal sales in the Saar Basin should be made in francs.[75] In January, 1921, the Governing Commission appointed a special commission, with the French Secretary-General of the Governing Commission as president, to consider the question of paying in francs the workers on railways which were under the direction of the Belgian member of the Governing Commission.[76] On March 16th, 1921, the Governing Commission adopted a resolution authorizing the franc to be used on railways and the tariffs to be charged in francs, to become effective May 1st, 1921.[77]

[72] *Memorandum by the Political Parties in the Saar Territory,* March 13th, 1923.
[73] *Official Journal,* June, 1923; p. 598.
[74] Par. 32, Annex to Arts. 45-50, *Treaty of Versailles.*
[75] *Official Journal,* November, 1920; p. 72.
[76] *Ibid.,* March, 1921; p. 203.
[77] *Ibid.,* July, 1921; p. 627.

Whereupon the inhabitants complained that the franc was being made the legal tender of the territory and protested against the decree of March 16th, 1921.[78] M. Wellington Koo was requested by the League Council to make a report on the subject. He upheld the right of the Governing Commission to take such action, under paragraph 32.[79] The Council apparently believed that this substitution of foreign currency for the native currency was not one on which the inhabitants need be consulted, for it declared "that the decision of the Governing Commission of the Saar Territory pronounced on this object in its decree of March 16th, 1921, does not call for any observations on its part." [80]

This opinion so encouraged the Governing Commission that in December, 1922, it took the next step and, by decree, laid down the procedure for the transformation of companies whose capital was in marks into companies with their capital in francs.[81] On May 18th, 1923, the Commission took the final step and issued a decree in which it provided that the French franc should become the sole legal tender in the Saar Basin and that all contracts and transactions should be carried on in that currency, with the exception of transactions with foreign countries which would be subject to special regulations to be issued by the Governing Commission.

It will be observed that the Chairman, with the aid of the Council, interpreted the Treaty provisions to mean that the mark should be retired and the franc substituted. This procedure began immediately after the appointment of the Commission which adopted the policy of the Mines Commission long before any considerable depreciation of the mark began. The chronology of the retirement of the mark was as follows: The Mines Commission immediately adopted the franc as the legal tender in the Mines; in August, 1920, coal sales in the Saar Basin were reckoned in francs; in March, 1921, a decree was passed authorizing the franc as the legal tender in public service; in December, 1922, a decree laid down the procedure for the transformation of companies whose capital was in marks into companies

[78] It will be observed with what forethought the division of duties among the Commission was planned; for the combination between the French and Belgian members permitted a change of currency in all of the public services without the necessary consent of the other members of the Commission and the head of the special commission was the Secretary-General of the Governing Commission, also a French national.

[79] *Official Journal,* September, 1921; p. 688. [80] *Ibid.;* p. 690.

[81] *Ibid.,* January, 1923; p. 92.

with their capital in francs, and on May 18th, 1923, a decree provided that the franc should be made the sole legal tender.

EDUCATION

"Under the control of the Governing Commission the inhabitants will retain their local assemblies, their religious liberties, their schools and their language.[82]

"The French State shall always have the right of establishing and maintaining, as incidental to the mines, primary or technical schools for its employees and their children, and of causing instruction therein to be given in the French language, in accordance with such curriculum and by such teachers as it may select." [83]

On July 10th, 1920, the Governing Commission issued two decrees upon which the inhabitants were not consulted. These provided that children of miners and of inhabitants of the Saar might fulfill their legal school obligations by attending schools established by the French State.[84] On January 18th, 1923, the inhabitants of the Saar Territory complained that the Governing Commission was violating the Treaty provisions in permitting and encouraging German children, other than those of miners, to attend the schools organized in the Saar Basin under the French Mines Commission.[85] The complaints pointed out that under this provision German children were being enticed into French schools by means of free school outfits, by presents of clothing, by the favorable treatment of mine workers whose children attended these schools, and by other means.

It will be observed that paragraph 28 authorizes the French State to establish schools for its employees and their children; but the statement made by the Chairman indicated that children of inhabitants other than miners had been included.[86] This question of education bears an important relation to the plebiscite to be held in 1935.[87]

DECREE SUPPRESSING FREE SPEECH AND ASSEMBLAGE

On February 5th, 1923, a general strike of miners was proclaimed and lasted until May 15th. This strike, together with the policy adopted by the Council with reference to the complaints submitted to it, and the resolution adopted by the Council on March 26th, 1922,

[82] Par. 28, Annex to Arts. 45-50, *Treaty of Versailles.*
[83] Par. 14, Annex to Arts. 45-50, *Treaty of Versailles.*
[84] *Official Journal,* April, 1923; p. 415. [85] *Ibid.;* pp. 414-416.
[86] *Ibid.;* p. 419.
[87] There were many other complaints, including the important one of housing, which are not included here, but which should be considered in any thorough official inquiry into prevailing conditions.

by which the Council had guaranteed that a French administration should continue in the Saar until 1925,[88] encouraged the Chairman to take more drastic action in the Saar. In the name of the Commission, a decree was promulgated on March 7th, 1923, suppressing free speech and the right of assemblage, which was followed on May 2nd by a decree prohibiting picketing.[89]

The first decree was promulgated upon the responsibility of the Chairman and the Danish member and contained provisions for the punishment of actions against officials and the government; for storing and concealing arms; and for conspiracy; and was intended to protect the present government.[90] To these provisions there were few objections. But the clauses which became the subject of controversy were the following:[91]

Art. 2. "Persons committing any of the following offences shall be liable to imprisonment for a period not exceeding five years and, should the Court so decide, to a fine not exceeding 10,000 francs:

"(1) In public or at a meeting:

"(a) Casting discredit on the Treaty of Peace of Versailles.

[88] This resolution was adopted in the form of a report submitted by M. Wellington Koo in March, 1922, containing the following paragraphs:

"But the difficulty with which the Council is faced in this matter is the stipulation of the Peace Treaty which lays down explicitly that the members of the Governing Commission are appointed for one year only and that their appointment may be renewed.

"The execution of the programme submitted by the present Governing Commission and the good administration of the Saar Territory demand that the Commission should be given the assurance that, unless exceptional circumstances arise, its term of office will be renewed twice more—that is to say, up to the beginning of 1925; the Governing Commission will then have held its term of office for five years.

"In adopting this resolution, the Council will not in any way infringe the stipulations of the Peace Treaty since it will still be able to make use of all the rights conferred upon it by the Peace Treaty, and to revoke or not to renew the appointment of this or that member of the Commission. A declaration of this kind, however, made public, will ensure to the Commission the stability which is necessary to it and will undoubtedly have a tranquilizing effect upon the situation in the Saar Territory and diminish the political difficulties which necessarily arise from annually renewing the Commission." *(Official Journal,* May, 1922; p. 417.)

[89] *Official Journal,* August, 1923; p. 921.

[90] The Saar member of the Commission abstained from voting for this decree, as did also the Canadian member, the latter on the ground that it was unnecessary; that the strike against which it was aimed had been in progress for a month and nothing had happened to disturb public tranquility; that the ordinary procedure of law was sufficient; that there was no emergency; and the Advisory Council should have been consulted. *(Official Journal,* August, 1923; p. 925.)

[91] *Official Journal,* April, 1923; pp. 421-422.

"(b) Insulting or traducing:

"(I) The League of Nations, its Members or the States signatories of the Treaty of Peace of Versailles;

"(II) The Governing Commission, its members, organisations or the officials responsible for the conduct of its administration.

"(2) Uttering threats or using insulting or defamatory language in public or at a meeting calculated to prejudice the free and independent exercise of the rights conferred by paragraph 34 of Annex IV, Part III of the Treaty of Versailles.[92]

Art. 5. "Legal proceedings may be brought against any person for offences under Articles 1 and 2, even if such offences have been committed outside the Saar Territory.[93] * * *

Art. 7. "Meetings, processions and demonstrations may be prohibited when public feeling is so excited that there may be reasonable grounds for apprehending that language of a nature to constitute an offence under Articles 1 and 2 will be used at such demonstrations. Societies and meetings at which language of this nature is used, and societies and meetings the object of which would render them liable to punishment under Articles 1 and 2, may be prohibited and dissolved. * * *

Art. 12. "Persons committing any of the following offences shall be liable to imprisonment and, if the Court so decide, to a fine not exceeding 10,000 francs:

"(1) Organizing meetings, assemblies and processions forbidden under Article 7 and subsequent articles, or speaking at such meetings, assemblies and processions;

"(2) Retaining membership of societies dissolved under Article 7, paragraph 2, or furthering or assisting them in any other manner.

"For the purposes of this article, any ostensibly new society which, in point of fact, has only been founded to replace a former society shall be regarded as a dissolved society." * * *

Art. 16. "An appeal may be made against the orders issued by the member of the Governing Commission responsible for the Department of the Interior, or the decisions taken by him or his representative, under Article 7 *et seq.* and Article 14 of this Decree, within a period of fifteen days from the date on which the order has been notified or on which a copy of the decision has been submitted to the High Administrative Court of the Saar Territory, which will then proceed to hear the appeal in the customary manner."

Cases brought under this decree were not to be tried nor the penalties applied in ordinary established courts of justice, for Article 6 of the

[92] This provision relates to the plebiscite and is of especial interest as voting in the plebiscite is not to take place until 1935 and the League of Nations is to prescribe the conditions and methods which are to secure the freedom, secrecy and trustworthiness of the vote. Therefore, it seems that the Governing Commission is to begin ten years in advance to penalize persons for the violation of regulations not yet made and over which the Governing Commission has no jurisdiction; thus invading a field specifically reserved to the League.

[93] Of this article Viscount Cecil said: "It was therefore possible for all the editors of the newspapers in all the capitals of Europe to be imprisoned." (*Official Journal,* August, 1923; p. 919.)

Decree provided that the Chairman and the Danish member in charge of Justice should create a special court consisting of five judges to be named by the Chairman as proposed by the Danish member; a special officer was appointed by the Chairman to enforce the provisions regarding meetings, parades, associations and speakers; and the prohibitions against the press were to be issued by the Chairman personally. The representatives of the inhabitants were not consulted by the Chairman, and the Decree was laid before the elected Advisory Council only after it had been promulgated.[94]

The British member of the Governing Commission was especially opposed to both the form of this Decree and the manner of its promulgation whereby other members of the Governing Commission and the inhabitants were disregarded. As the League Council took no action concerning the Decree, it was brought to the attention of the British Government, a signatory to the Treaty, as a violation of the terms of the Treaty.

DECREE PROHIBITING PICKETING

On May 2nd, 1923, another decree was promulgated as an amendment to the Industrial Code, by the Governing Commission, also without consulting the inhabitants, and provided as follows:[95]

"(1) Picketing in any shape or form is forbidden. Any breach of this order will be punished with imprisonment up to one year and with a fine not exceeding 500 francs.

"(2) Whoever attempts, by the employment of physical force, threats or insults

"(a) to induce employees or employers to take part in discussions of the kind described in paragraph 152 or to prevent them from withdrawing from the same;

"(b) to induce workmen to strike, or prevent them from continuing or accepting work;

"(c) to induce employers to dismiss workmen or to prevent the engagement of workers, will be punished with a term of imprisonment of not less than one month.

"In cases where such attempts have been repeatedly made, the term of imprisonment will be increased to not less than one year.[96]

[94] The Technical Committee was consulted with regard to this decree and in approving of the decision of the Governing Committee made certain reservations which were apparently disregarded. The Technical Committee is appointed by the Governing Commission and does not conform to the requirements of paragraph 23. *(Official Journal,* August, 1923; p. 913.)

[95] *Amtsblatt* of the Governing Commission, No. 11, May 2nd, 1923.

[96] The Canadian member abstained from voting for this decree, for its application would have been enforced by French soldiers, which event he would have considered deplorable. *(Official Journal,* August, 1923; p. 925.)

DISCUSSION IN THE HOUSE OF COMMONS

Before much progress had been made in the enforcement of the second decree, knowledge of the situation reached the British House of Commons. On May 16th, 1923, Mr. Asquith made these decrees the subject of an address in which he said, in part:[97]

"This, however, is a serious matter. It affects the whole prestige and moral authority of the League of Nations as an international administration. The right hon. gentleman wisely and properly has not attempted to say one word in defense of this monstrous and ridiculous decree. One might ransack the annals of despotism in the worst days of Russia's oppression of Poland without finding a more monstrous specimen of despotic legislation, more suppressive of the ordinary elementary rights of free citizenship, than is to be found in this decree, which goes forth to the world with the authority of the League of Nations. It is not only not consonant with the traditions of British liberty, but it is in direct defiance of the principles which all democratic and free countries have been endeavoring to put into practice for years past. It stands without a defense.

"Under the Treaty of Versailles the League of Nations was established as the sovereign authority in the Saar area. The Governing Commission is nominated by the League, and derives its authority from the League, and the League is responsible to the world at large for the acts of the Commission which are not repudiated by the League.

"It is said that the decree was passed by a majority of the Governing Commission. We know how that majority was composed. There was the French president of the Commission, a Belgian—who must be regarded in these matters as an associate of France—and a Dane with a French name. The two dissenting members of the Commission were the representative of the Saar and our Canadian representative. With regard to the legal aspect of the matter, the provisions of Article 23 of the Treaty laid down that when it is necessary to introduce modifications of the laws or regulations they should be decided on and put into effect by the Commission only after consultation with the elected representatives of the inhabitants, in such manner as the Commission may determine. That condition has never been fulfilled in regard to this decree. It is flagrant illegality. It is a complete revolutionary reversal of the elementary principles of civil and criminal law that are recognized in all democratic countries."

The British press then took up the matter and the affairs of the Saar Basin found their way into the press of other countries. On June 18th, 1923, the Commission yielded to public opinion and withdrew the decree, but replaced it with another, less drastic, which is now the prevailing law. This decree was urged upon the Commission by the Chairman on the ground that there was a reign of terror among Saar functionaries likely to render difficult the recruiting of officials for

[97] London *Times*, May 11th, 1923.

the Saar.[98] This substitute decree did not, however, appease British public opinion, and on June 21st the British Government sent a Memorandum to the Secretary-General of the League of Nations, requesting that the Council insert in the agenda of its next meeting "a proposal for an inquiry as to whether the administration of the Saar Basin by the Governing Commission has been in accordance with the spirit and terms of the Treaty of Versailles."[99] The request specified that the questions for consideration were "more particularly, the methods of administration which the Commission was intended to follow and whether the five members were intended to represent in any way the states of which they are nationals and to be at liberty to maintain relations with them"; and, "particularly as to the right of the Governing Commission to introduce legislation which was not in force in Germany on November 11th, 1918; and as to the conditions which must be fulfilled with regard to consulting the elected representatives of the inhabitants.[100]

INQUIRY BY THE LEAGUE COUNCIL

In accordance with this Memorandum, the Council began an inquiry on July 2nd, 1923. The British representative requested that it be held in public; but the French representative insisted upon private sessions. A compromise was reached whereby the British representative made his opening address in public; but the inquiry was held in private.[101] The representative from Sweden requested that the complainants—namely, the representatives of the inhabitants of the Saar—be heard, as well as the members of the Governing Commission. The French representative opposed this proceeding; therefore only one side was heard.[102] The proposal that the inquiry be conducted in the territory of the Saar Basin was also rejected, by reason of the opposition of the French representative. The Council then passed a resolution authorizing an inquiry, in order to put an end to misunderstandings

[98] The Canadian member refrained from voting for this decree on the ground that there was no evidence of a reign of terror in his department, consisting of 500 employees, of which 75 per cent were nationals of the Saar; he said by this decree German officials were supposed to be protected from the insults of their own countrymen. *(Official Journal,* August, 1923; p. 925.)

[99] *Official Journal,* August, 1923; p. 939.

[100] *Ibid.;* p. 939.

[101] *Ibid.;* p. 854. See also p. 40 for statement concerning lack of authentic information on European questions.

[102] *Ibid.;* p. 871. See also p. 129 for subsequent refusal.

and to arrive at a final settlement of the controversies which had arisen.[103]

In his opening address on July 3rd, 1923, Viscount Cecil pointed out (1) that the Governing Commission had two duties, one to secure the rights and welfare of the population; the other to secure to France complete freedom in working the mines; (2) that the acts of the Commission were the acts of the League, and that it was responsible for what the Commission did; (3) that there was to have been established a perfectly impartial government under officials whom the Council had the right to appoint and dismiss; and (4) that the duty of the Council was not to take a direct part in the administration, but to supervise the government, to review its acts from time to time, and to inquire as to the course of events in the territory.

The competence of the League, as thus stated, was challenged by both the French representative on the Council and by the Chairman of the Governing Commission, on the ground that the government had been entrusted to the Governing Commission, and not to the League, and that the Commission had been made the final authority in the interpretation of the Treaty provisions. The matters examined by the Council during its inquiry covered the following allegations:[104]

That the decree of March 7th, 1923, prohibiting free speech and assemblage had been promulgated without the approval of the full Commission and without having been submitted to the Advisory Council; that it constituted new legislation and was, therefore, in violation of paragraph 23 of the Annex to Articles 45-50 of the Treaty.

The Chairman of the Governing Commission admitted that the decree had been issued upon the responsibility of himself and that of the Danish member of the Commission, without the approval of the other members, and that it had not been submitted to the Advisory Council, representing the inhabitants of the Saar.[105] He defended this action on the ground that there was a strike; the Advisory Council was not in session; the decree would have met with widespread opposition; and, in his capacity as French member of the Commission, he could no longer tolerate the attitude taken by the press. Viscount Cecil pointed out that the strike had been in progress for three months, with little or no disorder; that no new emergency appeared to have arisen; that the Advisory Council met within a week and passed a resolution

[103] *Official Journal,* August, 1923; p. 872.

[104] The *Official Journal* of August, 1923, contains the record of this inquiry.

[105] This admission indicates a clear violation of the terms of the Note from the Allied Powers of June 16th, 1919, and of the provisions of the Treaty.

against the decree; and that the strike had been settled, not by the decree, but by an increase in wages.

That this decree was passed at the instigation of the French Government. It appeared from the testimony of the Chairman of the Governing Commission that the French Government had been informed concerning the decree and that the Chairman had been in communication with the French Minister of War, as was indicated by the dispatch of extra troops to the Saar Basin at the time the decree was promulgated.

That the decree of May 2nd, 1923, prohibiting picketing had been promulgated without consultation with the inhabitants, and was an infringement of the rights of workmen as guaranteed under the Treaty.[106]

The Chairman admitted that such a decree had been promulgated without such consultation, but contended that no special law existed in Germany permitting picketing, but the practice had spread as a result of court decisions which had generally recognized it as legal when it was peaceful. There was, therefore, no law authorizing picketing, but only a legal practice favorable to it. Consequently, the Commission had not abolished any German law, but had modified only the decisions of the German Courts, which had tolerated picketing. Also, it appeared that formerly offenses in connection with picketing had been brought in the district courts, which the Commission considered incompetent to deal with such serious offenses as interference with the freedom to work; and the decree changed these offenses to violations of the common law which brought them before a different court.[107] The Chairman stated that the "Governing Commission followed the ordinary legal practice of consulting the Advisory Council concerning the promulgation of a law, but not concerning any amendment made in that law with the object not of increasing but of decreasing its severity." [108]

That additional French troops had been sent to the Saar Basin upon

[106] This guarantee is contained in paragraph 12 of the Annex, which states: "The rights of the workmen shall similarly be maintained, subject to the provision of said paragraph 23, as established on November 11th, 1918, by the German laws and regulations above referred to."

Paragraph 23 prohibited the *modification* of such laws without consultation with representatives of the inhabitants.

[107] At the meeting of the Council in December, 1923, Viscount Cecil renewed the question, asking when it would be possible to withdraw the decree. The Chairman of the Governing Commission stated that such withdrawal was not yet possible, and no public record indicates that it has taken place since December, 1923.

[108] *Official Journal,* August, 1923; p. 920.

request of the Chairman, without consulting other members of the Commission, or without first requesting the use of Inter-Allied troops. The Chairman admitted that he had considered the 2,000 available French soldiers as insufficient to assure the safety of the mines during the strike, and that their number had been doubled, upon his request to the French Minister of War. He defended this action on the ground that, as Minister of the Interior, he was in charge of public safety, and, therefore, need not consult the other members in an emergency such as he believed existed at the time. He stated that normally the number of French soldiers in the Saar comprised 2,200 and that during the strike their number had been approximately 6,000.[109]

That the Chairman of the Commission was conducting the affairs of the Saar as the representative of the French Government. The Chairman admitted that the Commission had an office in Paris and in no other capital; that information concerning the receipts and expenditures of the Saar had been furnished to the French Government directly, and that certain communications received by him from the French Government were not disclosed to other members of the Commission. He made a distinction between communications sent to him as Chairman, and communications sent to him as the French member of the Commission, thus indicating the performance of his duties in a dual capacity. Upon further questioning, he insisted that any Chairman must have direct relations with the French Government in order to promote the economic interests of the Saar.[110] He also stated that it was not practicable for all of the correspondence with the Chair-

[109] The number of French troops *available* in the Saar Basin on February 1st, 1924, was reported by the Chairman to be 1816 men (L. of N. *Monthly Summary*, April, 1924; p. 61). A Memorandum of the Political Factions of the Saar, dated March 11th, 1924, records, however, that the Chairman stated that 1800 soldiers were available out of a total of 4000 garrisoned in the Saar Territory. These misleading summaries indicate a need of precision and full instead of partial statements and the necessity for an official public investigation into the number of French soldiers in the Saar.

[110] Among the economic interests thus promoted is the penetration of Saar industries by French capital. The following changes have taken place since the armistice was signed:

Name of Works	Pre-War Ownership of Capital	App. Pre-War Capital Value in Gold Marks	Change in Ownership of Capital Since Armistice
Dillingen Hüttenwerk A. G. Dillingen	Practically all German with small Belgian holdings	25 Millions	60% acquired by French shareholders

man to be passed on to the members of the Commission, on the ground that the French member of the Governing Commission might, on certain questions (for example on the coal tax or application of the customs regime) have to make observations to the French Government; and that he would, perhaps, have to enter into a discussion with that Government. Therefore, it would not be possible in general interests to communicate these matters. He thought that unofficial letters written by a government to a representative of its own nationality were not intended to be communicated. It appeared, although the Canadian

Name of Works	Pre-War Ownership of Capital	App. Pre-War Capital Value in Gold Marks	Change in Ownership of Capital Since Armistice
Vereinigte Hüttenwerke Burbach-Euch-Dudelingen A. G. Saarbrücken	Luxemburg and Belgian capital only	20 Millions	10% French
Halberger Hütte G. m. b. H. Brebach	All German	30 Millions	60% "
Neunkircher Eisenwerk A. G. vorm. Gebrüder Stumm Neunkirchen-Saar	do	20 Millions	60% "
Röchling'she Eisen und Stahlwerke G. m. b. H. Völklingen-Saar	do	20 Millions	Still nearly all German
Société des Hauts Fourneaux et Acieries de Differdange St. Jugbert-Rumelange St. Jugbert	do	10 Millions	Now all French
Acieries et Usines a Tubes de la Sarre Saarbrücken Formerly Mannesmann Works	do	10 Millions	60% French
Ehrhardt & Sehmer Saarbrücken	do	6 Millions	60% "
Homburger Eisenwerke, A. G. vorm. Gebr. Stumm G. m. b. H.	do	6 Millions	40% "
Dingler Kercher & Co. G. m. b. H. Saarbrücken	do	3 Millions	60% "
Ernest Heckel Gesellschaft für Forderanlagen G. m. b. H.	do	5 Millions	60% "
Dillinger Eisen-und Maschinenbau vormals Meguin A. G. Dillingen-Saar	do	5 Millions	Now all French
Aktien-Glashütte St. Jugbert	do	2 Millions	60% French

(These figures were furnished by the Saarbrücken Chamber of Commerce and have not been verified.)

member was in charge of finance, that such questions as the coal tax from which the chief income of the government was derived, did not concern him, but only the French Chairman and the French Government.

That the powers of the Advisory Council had been limited by the decree under which it was elected, by the appointment of a Technical Committee, and by the appointment of a Chairman of the Advisory Council by the Governing Commission. These allegations were admitted and defended on the ground that the Commission had a right to determine the conditions under which such an Advisory Council should be created; that it was not the intention of the Treaty to create a parliamentary body, and the Commission, therefore, was acting within its powers to take from an elective body the right to select its own presiding officer and had the right to appoint a technical committee to undertake part of the work of the Advisory Council. The Chairman again pointed out that the Governing Commission, not the League Council, had been made the final interpreter of the provisions of the Treaty and that France and Germany had agreed to abide by the decisions of the Governing Commission.[111]

That reports to the League Council were made by the Chairman without consultation with other members of the Commission or without receiving their approval. This allegation was admitted by the Chairman and defended on the ground that by virtue of his position as Chairman and executive in charge of the most important functions of the Commission, the reports consisted mostly of his work. This statement was questioned before the Council by the Canadian member of the Commission, who stated that the conclusions of the report, dealing with matters of general policy, were formulated by the Chairman alone, although it appeared that they were expressing the opinion of the whole Commission. The Chairman testified that when the Belgian member had protested that these reports did not exactly represent his view, he had requested the members to send in their reports which he had inserted; but he admitted that the other members had not at any time passed upon the report. The first report, approved by the Commission as a whole, was rendered in June, 1923, three years after the Commission began its administration and one month before the inquiry.

[111] This provision in the Treaty places the responsibility for raising questions of the integrity of these interpretations squarely upon the signatories to the Treaty not bound by this provision.

That the Chairman of the Governing Commission had submitted reports directly to the French Government without consulting the Governing Commission. The Chairman denied this, but admitted that he had sent to the French Government the accounts for the fiscal period of 1920-21 of the Saar Government over the protests of the Canadian and Saar members of the Commission; and that no copy of this report had been furnished at the time to the League of Nations. It appears that this information was given to the Financial Committee of the French Senate, which had desired to examine the budget and had requested a statement of receipts and expenditures, on the ground that it believed the proportion of the tax was too high on the coal, the output of which was then controlled by France. The French Government received this information and protested against the tax rate.

That the coal tax which was the chief source of revenue for the Saar Government had been reduced to benefit the French Government and without the consent of other members of the Commission or of the inhabitants of the Saar.

It appeared that in 1920-21, when the Commission began its work, the German law provided for a tax of 20 per cent. on coal. In March, 1920, before a full Commission was assembled and without consulting the representatives of the Saar, this tax was reduced to 10 per cent. At the same time the Commission had such small resources that it asked the League for a loan of £4,000. The local Council requested that the rate of 20 per cent. be restored. As this tax constituted almost the entire income of the government, it was restored and maintained at the rate of 20 per cent. until January, 1921. On January 1st, 1921, on protest from France that the tax was too heavy and not in proportion to the taxable wealth of the Saar, it was again reduced to 10 per cent. On July 20th, 1922, the tax was reduced to 7½ per cent. until January 31st, 1923, when it was further reduced to 5 per cent., which is now the rate, representing a saving of 15 per cent. to the French Government on every ton of coal mined under its administration. The member of the Commission in charge of finance testified that the last time the tax had been reduced, the Chairman of the Commission had gone to Paris and concluded an agreement without consulting his colleagues on the Commission and without having asked the opinion of the Commissioner in charge of finance. This agreement was signed by the majority, the Canadian and Saar members refusing to sign a document affecting matters within the jurisdiction of the Canadian member and

upon which he had not been consulted; and also because the proceeding was regarded as irregular.[112]

That on May 18th, 1923, a decree had been promulgated making the franc the sole legal tender in the Saar. The Chairman admitted the fact, stating that the decree had been submitted to the Advisory Council, which body had expressed a general opinion against it, which opinion the Commission had the right to disregard.[113] Viscount Cecil pointed out that the British Government had been informed of this decree only a month or more after its enactment and suggested greater promptness in notifying Council members of the important decisions taken by the Governing Commission.

DECISION OF THE COUNCIL

At the close of the inquiry[114] at its meeting on July 7th, 1923, the Council passed the following resolution:[115]

"The Council of the League of Nations has had before it a proposal by the British Government for an enquiry into the situation in the Territory of the Saar Basin, and more especially into the recent events which have resulted in the taking of exceptional measures by the Governing Commission of the Territory.

"The Council has desired on this occasion to strengthen the ties which should exist between the League of Nations and its representatives in the Saar by entering into personal contact with all the members of the Commission.

"The Council has, with the members of the Commission, considered the foundation of the Government in the Saar Basin, as established by the Treaty of Versailles.

"The system of government in the Saar was established under the Treaty in order to assure the rights and well-being of the population and to guarantee to France complete freedom in working the French State Mines, upon which the prosperity of the country depends.

"In virtue of the instructions given to the Governing Commission at the date of its constitution, February 13th, 1920, the Commission is responsible to the League of Nations for the execution of its duties in accordance with the stipulations of the Treaty of Versailles. The Commission, the

[112] The resignation of the Canadian Member of the Governing Commission was accepted by the Council on September 20th, 1923.

[113] For note from Allied Powers in disagreement with this statement see p. 94.

[114] It will be observed that in the conduct of this inquiry the people of the Saar were denied a hearing although two members of the Council favored it, and only the members of the Commission were heard. An examination of the record of the inquiry as published in the *Official Journal* of August, 1923, indicates that considerable space is given to the statements of the Chairman, but very little reference is made to the statements made by the Canadian member, who was in opposition to the policy pursued by the Governing Commission.

[115] *Official Journal,* August, 1923; p. 930.

executive of which is the Chairman, is, in all cases, collectively responsible for the execution of those duties which it assigns to its individual members in order to promote easy and rapid dealing with the problem of government.

"The Council has decided that it is unnecessary to discuss the Provisional Decree of March 7th last, as the decree has been withdrawn. In regard to the other exceptional measures which the Commission deemed it necessary to take subsequently, the Council leaves it to the discretion of the Commission to decide upon the moment when it is advisable to return to the normal course of law. The Council has learned with satisfaction of the amnesty measures recently decreed by the Governing Commission.[116]

"The Council appreciates the economic considerations which have led the Commission to introduce the franc as the sole legal currency in the Saar.[117]

"With regard to the question of maintenance of order, the Council has on various occasions stated that it is desirable that the support of a foreign garrison should be withdrawn, as soon as the development of the local *gendarmerie* permits. By its resolution of April 23rd, 1923, the Council took note of the measures already taken by the Commission towards this end, and requested the Governing Commission to submit its programme for increasing the strength of the local *gendarmerie* before adopting the budget for the fiscal year 1924-25.

"The Council expresses again its great appreciation of the administrative work achieved by the Governing Commission during three and a half years in particularly difficult circumstances, and assures the Commission of its whole-hearted support in the accomplishment of the task entrusted to it."

It will be observed that in view of the record of the evidence taken at the hearing, this resolution constitutes what is popularly known in the United States as a "whitewash."

THE RESULTS OF THE INQUIRY

When the Council met in December, 1923, it was agreed to postpone the appointment of the Chairman and members of the Commission until March, 1924. But at the March session of the Council the following members were reappointed: M. Rault (France), Chairman;

[116] The amnesty decree was as follows:

"Amnesty to be extended to all infractions of the decree of May 2nd, 1923, to all contraventions and acts of resistance, violation of domicile, insults, libels, attempts on individual liberty, threats, intimidation, small acts of violence committed by reason of or during the strike, which had continued up to today, to all political misdemeanors, especially infraction of the provisional decree of March 7th, 1923; * * * finally to all acts and misdemeanors committed through the press, to all infractions and misdemeanors committed or connected with the press, and to all proceedings taken as a result of misdemeanors committed by the press." *(Official Journal,* August, 1923; p. 921.)

[117] It will be remembered that the movement to substitute the franc for the mark began in August, 1920, before the mark encountered a crisis and when the economic considerations were less apparent than during the inquiry.

M. Lambert (Belgium) and Mr. Stephens (Canada).[118] The new members were M. Kossman, Chairman of the Advisory Council, appointed by the Governing Commission, in place of the candidate of the Saar inhabitants, Dr. Levacher; and Senor Espinosa de los Monteros (Spain), in place of Count von Moltke-Huitfeld (Denmark), who requested not to be reappointed.[119]

The personnel of this Commission guarantees a French administration of the Saar Basin until 1925, as was agreed in the adoption of the report of M. Wellington Koo, in March, 1922. The meeting of the Council is also noteworthy in other respects than the continuation of an unneutral Commission. The Council again denied a hearing to the Saar representatives who were present, including Dr. Herman Röchling, who has been held a war prisoner in the Saar by instructions from the Inter-Allied Rhineland Commission on one side and by France on the other.[120] M. Branting (Sweden) renewed his plea that this delegation be given a hearing, but the Council refused.[121]

Lord Parmoor (Great Britain) suggested to the Council that in future it might be advisable to invite the representatives elected by the Saar inhabitants to submit proposals for the appointment of the Saar Member.[122] His suggestion was supported by M. Branting and op-

[118] Mr. Stephens had been appointed to succeed Mr. Waugh.

[119] It appeared from the testimony taken at the inquiry that it is customary for the Council to ask all governments, other than the representatives of the Saar inhabitants, whether the appointment of their national on the Governing Commission is agreeable. The Saar inhabitants alone have no voice (see statement of Danish member, *Official Journal,* August, 1923; p. 911). In the Advisory Council of the Saar, one of the members proposed early in March, 1923, that a telegram be sent to the Council of the League requesting that the Advisory Council be consulted on the election of the Saar member of the Governing Commission. This proposal could not be voted, not being on the agenda of the Advisory Council. *(Le Temps,* March 9th, 1924.)

[120] The brothers Röchling, owners of one of the largest steel works in the Saar, were charged with pillaging French machinery at the time of the retreat of the Germany army from France. One brother was imprisoned for nearly two years in France before his innocence was proved and one is still on the blacklist, sentenced to ten years' imprisonment should he enter France. The Inter-Allied Rhineland Commission issued a decree by request of the French chief of the Saar Police prohibiting the Röchlings from entering the occupied territory. Thus they were made virtually prisoners in the Saar. (London *Times,* January 12th, 1924.)

[121] It is not without interest to note that during the settlement of the Aaland Islands dispute, upon request of M. Branting, representatives of the Islands were heard, and it is the custom to hear Danzigers, a principle not adhered to when the Council acts as a trustee in the Saar.

[122] The London *Times* is authority for the statement that Lord Parmour found it impossible to support Dr. Levacher by reason of the fact that at the December

posed by M. Hanotaux (France) on the ground that the matter was of no immediate interest and could be postponed.[123]

The situation with regard to French troops has not changed. Mr. Waugh, the Canadian representative on the Governing Commission, suggested that they be withdrawn across the frontier where they would be as readily available, but no action was taken on the suggestion. The question of increasing the *gendarmerie* by 500 instead of 200 during the next fiscal year was discussed and not urged by reason of opposition from members of the Commission that the finances did not permit it.[124] The Council was content with impressing upon the Commission the importance it attached to the matter and hoped the financial position would sufficiently improve.[125]

The Council was also instrumental in the repeal of the interdiction of Dr. Röchling[126] by the Inter-Allied Rhineland Commission. Also, in the matter of the complaint of the German Government, with regard to restrictions placed upon the freedom of movement of inhabitants of the Saar and merchandise from that district through the occupied portions of Germany, which were alleged to be in violation of paragraph 2 of the Annex—the Council secured from the Inter-Allied High Commission of the Rhineland grants for passage of persons to and from the Saar.

Although the alleged violations of the Treaty remain and the grave injustices complained of have been remedied in but few instances, the effect of the inquiry may be summed up in the words of a Saar resident:

"We care little now for principles of operation so long as we get results, for it is results we must live by; therefore, that our representatives were not heard at the inquiry concerns us very little so long as the true state of affairs was revealed. We are inclined to be grateful for the small

meeting of the Council an agreement had been made to take Viscount Cecil's candidate, Dr. Kossman, who had been appointed by the Governing Commission, as Chairman of the Advisory Council.

[123] *Monthly Summary,* April, 1924.

[124] The discussion in the Council did not take the practical aspect of considering the restoration of a part of the coal tax to provide the income and thus relieving the French budget of 24,000,000 francs now carried to provide soldiers for the Saar. As a result of the discussions at the Council meeting of March, 1924, and of the change in the French Government, however, the number of *gendarmerie* is to be raised, according to late reports, from 355 men to 755 in the fiscal year 1924-1925. (L. of N. *Monthly Summary,* May, 1924; p. 99). The examination of a German request concerning the continued presence of French troops, submitted to the Council at its twenty-ninth meeting, in June, 1924, has been postponed until the next session of the Council.

[125] *Monthly Summary,* April, 1924.

[126] See footnote on p. 124, indicating that this firm is one of the few which have resisted the penetration of French capital. Also see footnote on p. 129.

things the League has accomplished and to regard them as the promise of larger things. We are so constantly observing how much worse things could be without the League that we have lost our perspective; small results assume an importance because they give hope. We ask ourselves not what has the League done, but what would have happened had it not been there until its existence has come to be more important than justice or order, for it represents to us the only possibilities of both. Our sense of expediency far transcends our hope of justice."

THE PLEBISCITE

Those who seek the explanation for this strange contest, in which the League Council is little more than a pawn, will find it in the plebiscite to be held in 1935. At that time a vote is to be taken by the inhabitants of the Saar by communes or districts to decide on the alternatives of maintenance of the present regime; or union with France; or union with Germany. The Saar Territory will, therefore, remain the scene of propaganda and of contest for advantage with reference to that election. The conditions, methods and date of voting are to be fixed by the Council, which thus becomes responsible for the conduct of the election. The League of Nations is then to decide upon the sovereignty, according to the wish expressed by the inhabitants.[127] This election is of importance, not only for control of the territory, but, in the event of the vote favoring Germany, it acquires the right to repurchase the mines, the price to be fixed by three experts, one of whom is to be appointed by the Council of the League. In the event that the territory or a part of it goes to France, an equitable arrangement regarding coal, contracts and prices is to be fixed in due time by the Council. In the event that the vote favors the present regime, the League of Nations becomes a sovereign state.

Therefore, the question of the maintenance of a neutral government, of safeguarding the vote,[128] and of maintaining just and equitable

[127] Were the United States represented on the Council, it would assume responsibility for the conduct of an election in foreign territory unless a reservation is made covering this specific matter. If the vote favors the League of Nations, the United States would become a member of the sovereign state over the Saar Basin.

[128] The Council has appointed a Commissioner to prepare the records for the vote in 1935, and this work has been completed. It is regrettable, however, that opposition in the Council should have prevented the actual compilation of the voting lists from these records. That would have ensured, beyond doubt, a voting list which could not have been tampered with. As it is, the League should be congratulated for having appointed Dr. Bonzon, a *bona fide* neutral, to prepare the record; who has won the esteem and cooperation of the inhabitants of the Saar Basin and of the Governing Commission.

relations under the Versailles Treaty, has a direct bearing not only upon the immediate condition and prosperity of the people, but upon the proprietorship of the mines and upon the sovereignty under which the people must eventually live.

COMMENTARY

On behalf of the Council it should be observed that it inherited the administration of a territory wherein the Principal Allied Powers had already parceled out all of the rights and duties among three authorities and had reached certain agreements among themselves with regard to the future. This raises the question whether the League is to accept obligations under which its prestige and good name is sought, but wherein it has very limited authority over the actual conditions.

By the appointments of a French chairman and executive and retention of a French army, the Council at its first meeting acquiesced in the policy proposed to it and placed the affairs of the Saar beyond its actual control. This first step was followed by the Chairman who apportioned the twelve most important departments out of seventeen to himself and his friends, and who established the practice of departmental decisions in place of decisions by the full Commission.

From this system of government there arose disputes concerning the continued presence of French troops and French courts-martial and expulsion of inhabitants; also over the definition of inhabitants; allocation of foreign affairs; election of an advisory council, and of the Saar representative on the Governing Commission; also the substitution of the franc for the mark, and disputes over education, taxation and housing—all containing allegations of violations of the Treaty of Versailles.

These complaints when forwarded to the Council were reported upon by a single *rapporteur,* no hearings were granted to the complainants and the decisions invariably upheld the Governing Commission. Decrees, issued in the name of the Governing Commission but without the consent of the inhabitants, prohibited free speech and the rights of free assemblage, authorized the confiscation of property, and led the British Government to request the Council to make an inquiry. One decree was modified; the other remains.

The Council held a private inquiry at which only the members of the Governing Commission were heard, in which it appeared that the Commission had enacted new legislation or changed laws without the approval of the inhabitants; that it had imported French troops, had acted at the instigation of the French Government, and had reported to the French Government on matters not reported to the Council; also

that reports had been submitted to the Council as Commission reports without approval of its members; that the franc had by decree been made legal tender and taxation on coal reduced without consent of the inhabitants. Notwithstanding this state of affairs, the French Chairman of the Governing Commission has been reappointed by the Council and French domination of the Saar is to continue for another year. The holding of the inquiry by the Council into the affairs of the Saar is nevertheless an achievement, in that the Council asserted its authority and served notice that its entire complacency in the oppression of a people under its trusteeship is at an end.

CHAPTER VI

PROTECTION OF DANZIG FREE CITY

Danzig, situated at the mouth of the Vistula River on the Baltic Sea, was first developed as a port by an order of German knights in the early fourteenth century. As a member of the "Hansa," a union of free trading cities, Danzig had its own laws and administration, control over the port, right to raise duties, diplomatic representation in foreign countries, and its own troops and fleet. Although German in culture and language, Danzig was cut off from the German Empire by a strip of Polish territory extending to the Baltic Sea. Owing to this geographical situation and to the fact that much of its trade came from Polish hinterland, in the fifteenth century the city joined Poland in "personal union," recognizing the sovereignty of the King, without ceding him any rights on Danzig territory. In 1793, when Poland was dismembered, its Baltic coast, including Danzig, was joined to Germany. The territory of Danzig Free City has 360,000 inhabitants, 93% of whom are German.

To its creators in the Peace Conference, who indulged in dreams of self-determination and who expounded the principles of nationality and of economic freedom and equality, Danzig Free City in 1924 presents a strange fulfillment of their aspirations. Created by the Treaty of Versailles, half slave and half free, and ironically designated as a Free City, Danzig has led a precarious economic existence during the five years of peace. Under a curious complex of governments, its people now spend their time, not in healthy commercial rivalry, but in endless disputes.

THE FREE CITY UNDER THE TREATY

Before the war, Danzig was a prosperous German port. The Vistula River and a network of railways made it an important commercial center for a vast hinterland. At the close of the war, Germany was required to renounce title to the city and a small surrounding territory in favor of the Principal Allied Powers. The question then arose who would receive the prize. France desired it for Poland; Great Britain and Mr. Wilson were opposed. As it was a thoroughly German city, there was some difficulty in deciding what principle should be applied to determine its destiny. Not self-determination, for that would have reunited it with Germany; and not the principle of nationality, for that would have prevented its ultimate incorporation within Polish terri-

tory. It was finally decided to constitute it a Free City for the benefit of Poland, in accordance with certain other principles, namely: (1) Restitution and restoration, for prior to annexation by Prussia, Danzig had been a free city in fact as well as in name. (2) The equality of states, for by giving Poland an outlet to the sea, Poland would be receiving equality of treatment. (3) Right, for Poland had a right of way to the Sea before the annexation of Danzig by Prussia. Mr. Wilson was thus satisfied on the matter of principle and the following provisions became part of the Treaty of Versailles:

Art. 102. "The Principal Allied and Associated Powers undertake to establish the town of Danzig, together with the rest of the territory described in Article 100, as a Free City. It will be placed under the protection of the League of Nations."

Art. 103. "A constitution for the Free City of Danzig shall be drawn up by the duly appointed representatives of the Free City in agreement with a High Commissioner to be appointed by the League of Nations. This constitution shall be placed under the guarantee of the League of Nations.

"The High Commissioner will also be entrusted with the duty of dealing in the first instance with all differences arising between Poland and the Free City of Danzig in regard to this Treaty or any arrangements or agreements made thereunder.

"The High Commissioner shall reside at Danzig.

Art. 104. "The Principal Allied and Associated Powers undertake to negotiate a Treaty between the Polish Government and the Free City of Danzig, which shall come into force at the same time as the establishment of the said Free City, with the following objects:

"(1) To effect the inclusion of the Free City of Danzig within the Polish Customs frontiers, and to establish a free area in the port;

"(2) To ensure to Poland without any restriction the free use and service of all waterways, docks, basins, wharves and other works within the territory of the Free City necessary for Polish imports and exports;

"(3) To ensure to Poland the control and administration of the Vistula and of the whole railway system within the Free City, except such street and other railways as serve primarily the needs of the Free City, and of postal, telegraphic and telephonic communication between Poland and the port of Danzig;

"(4) To ensure to Poland the right to develop and improve the waterways, docks, basins, wharves, railways and other works and means of communication mentioned in this Article, as well as to lease or purchase through appropriate processes such land and other property as may be necessary for these purposes;

"(5) To provide against any discrimination within the Free City of Danzig to the detriment of citizens of Poland and other persons of Polish origin or speech;

"(6) To provide that the Polish Government shall undertake the

conduct of the foreign relations of the Free City of Danzig as well as the diplomatic protection of citizens of that city when abroad."

The Treaty of Versailles laid down certain other specifications, as follows: Article 105 provided that German nationals, ordinarily resident in the territory, *ipso facto*, lost their German nationality and became nationals of Danzig. Article 106 provided that, within a period of two years, German nationals over 18 years of age had the right to opt for German nationality. All persons who exercised this right were required, within twelve months, to transfer their residence to Germany. They were entitled to retain their immovable property in Danzig, and to take their movable property with them. Article 107 provided that all property belonging to the German State should pass to the Allied Powers which might transfer it to the Free City of Danzig or to Poland, as they might elect. Article 108 provided that the proportion and nature of the financial liabilities of Germany and Prussia to be borne by Danzig were to be fixed under Article 254 (Reparations) of the Treaty. All other questions were to be settled by further agreement.

It will be observed that the Treaty offered a complicated form of government. The title to the territory is vested in the Principal Allied Powers; the protection of that territory is put upon the League, and the foreign relations of Danzig are retained by Poland. Furthermore, the Treaty was its basic and original constitution; the Danzig-Polish Convention, negotiated by the Allied Powers, was its second best constitution, and then a followed a local constitution, negotiated under the direction of the High Commissioner for all matters not included in the Treaty and Convention.

It will also be observed that the concept of a Free City held by the members of the Peace Conference was one which had no control over its foreign affairs; or its customs, duties and traffic. It was to be a Free City with a harbor board imposed upon it, consisting of members who were one half aliens, with a foreign chairman; a Free City with its communications outside its own territory supervised and directed by a foreign power; and with its transit lines, including railways and river routes, entirely within the control of an alien and competitive state. The Free City also was to be subjected to outside restrictions regarding the highly domestic rights of immigration, naturalization and expulsion of aliens. Furthermore, appeals did not go to a judicial body, but to a single arbitrator, in whose selection the inhabitants had no voice.

THE POLISH-DANZIG CONVENTION

As provided in the Versailles Treaty, the Allied Powers negotiated a convention between Danzig and Poland, which the two governments adopted on November 9th, 1920. Briefly summarized, its provisions include the following:[1]

Articles 1-12 relate to foreign affairs: (1) Poland is to protect Danzig residents when abroad (Danzigers may be employed in Polish consulates in countries where the Free City has economic interests); (2) all foreign officials accredited to Danzig are required to have Polish approval; (3) international agreements concerning Danzig may be made by Poland after consultation with Danzig; if the latter disapproves, the matter is to be decided by the High Commissioner; (4) Danzig requires the consent of Poland to negotiate a foreign loan; (5) Danzig officials may have no intercourse with officials of Germany or other countries except *via* Warsaw; (6) Danzig may police foreigners who are in the Free City, subject to Polish supervision over foreign affairs; (7) all matters relating to foreign affairs are to pass through the Polish diplomatic representative in Danzig.

Articles 13-18 relate to customs: (1) Poland and the Free City constitute one customs territory, under Polish customs laws and tariffs. (2) The Danzig Customs Administration is responsible to the Polish Administration for the execution of customs laws and is accountable to it for the income.

Articles 19-28 relate to transit. They provide for the creation of a Harbor Board, to consist of an equal number of representatives from Poland and Danzig, namely five members each. The president is to be appointed under agreement between both governments; when they fail to agree the High Commissioner may request the Council to appoint a person of Swiss nationality.[2] The powers of the Board include the following: (1) Within the limits of the City, the Harbor Board is to exercise the direction and development of the port, waterways and railways serving the port, exclusive of the general railways. (2) The Board is to agree with Poland as to what part of the Vistula River is to be placed under its control. (3) All other railways are to be administered by Poland at its cost and profit. (4) In agreement with the Polish Government, the Board assures free traffic of immigration through the port and no private person or organization may undertake immigration enterprises without Polish consent.

[1] *Amtliche Urkunden zur Konvention zwischen Danzig und Polen;* Danzig, 1920.

[2] The Governments failed to agree, and the President was appointed by the Council, as provided, on February 26th, 1921.

Articles 29-32 relate to communications. They provide that Poland may establish a postal, telegraph and telephone service in Danzig for communication with Poland and foreign countries while the local service remains under the control of Danzig. The two countries are to make a convention for the regulation of tariffs.

Articles 33-38 relate to minorities and general agreements. The principles of the Minority Treaty made between Poland and the Allied Powers are to be applied. Agreements are to be made as to naturalization, execution of judgments against aliens on Danzig territory between the two countries, and as to a uniform monetary system. Poland obligates itself to facilitate the provisioning of Danzig with food, raw materials and combustibles. Article 39 relates to appeals. It provides that any disagreement is to be appealed to the High Commissioner, who may refer the question to the Council; but both parties reserve the right of appeal to the Council in the event of dissatisfaction with the decision of the High Commissioner.

The administration of Danzig thus acquires the following diverse elements to put into execution Treaty and Convention provisions: (1) A Polish Diplomatic Representative, in charge of Foreign Relations. (2) A Harbor Board with a minority of Danzig inhabitants as members, having a League Chairman. (3) A Polish Railway Administration, a Polish Customs Service, a Polish Postal and Telegraph Service and a High Commissioner from the League to supervise the drafting of a local constitution and to settle the endless disputes that arise from the various charters of government and the activities of alien elements in the governmental administration.

THE LOCAL CONSTITUTION

The Principal Allied Powers did not wait for the League to appoint a High Commissioner, but appointed Sir Reginald Tower to that position with instructions to administer the affairs of the Free City and to supervise the preparation of a constitution for a local government. On February 13th, 1920, the Council assumed the duties assigned to the "League" under the Treaty and confirmed the appointment of the High Commissioner, defining his duties to include: The formulation of a constitution, adjustment of differences arising between Poland and Danzig and the local administration of affairs until the local government was established.[3]

In due time a constitution was prepared, discussed by the Council,

[3] *Official Journal*, March, 1920; p. 53.

amended, and finally agreed to by the High Commissioner on May 11th, 1922. It created a Popular Assembly, A senate, a judicial system, and a budget; and dealt with the fundamental rights of individuals, religion, education and economics.[4] The Popular Assembly consisted of 120 deputies, elected for a period of four years by the "universal, direct, equal and secret suffrage of all citizens of both sexes over twenty years of age, in accordance with the principles of proportional representation." The Senate consisted of a chairman, vice-chairman and twenty senators. The President and seven principal members of the Senate were to be elected by the Assembly for a period of four years. The vice-president and thirteen senators, acting in a secondary capacity, were to be elected by the Assembly for an indefinite period. In case of disagreement between the two bodies, the Popular Assembly has the final decision and may appeal on a referendum to the people. The Senate represents the Free City in foreign affairs, subject to the limitations of Article 104 of the Treaty of Versailles.

To the League of Nations, this constitution reserved the following rights: Danzig may not serve as a military base, erect fortifications or authorize the manufacture of war materials without the consent of the League; and the Senate shall furnish to the League of Nations, at any time, upon request, official information regarding the public affairs of the Free City. It will be observed that this constitution added to the authorities already installed in the Free City, under the Treaty of Versailles and the Polish-Danzig Convention, an Assembly, a Senate, and a President and seven members of the Senate who constitute the local administration.

THE DISPUTES

In this small maritime city conflict was bound to arise where four separate bodies possessed rights—the Allied Powers over property, for the official title to Danzig vests in them;[5] Poland over foreign relations, commerce and communications; Danzig over local affairs, including education, citizenship and budget; and the League applying its protectorate over the territory. Disputes have occurred with such frequency that only a few of the most important have been selected as illustrations of the problems encountered and of the principles applied in their adjustment.

[4] *Official Journal, Special Supplement No. 7*, July, 1922.

[5] It will be recalled that the title to Fiume was also vested in the Principal Allied and Associated Powers. When Italy annexed Fiume, these Powers did not consider it expedient to insist upon their prior rights of proprietorship.

CONTROVERSIES OVER MILITARY QUESTIONS

Danzig is without means of self-defense. When the Treaty placed the Free City under the protection of the League, it made no provision for its defense. Poland was not slow to take advantage of the omission and it was called to the attention of the Council. That body, on June 22nd, 1921, assigned the duties of protection to the Polish Government when it passed the following resolution:[6]

"(1) The Polish Government is specially fitted to ensure, if circumstances require it, and in the following conditions, the defence of Danzig by land, as well as the maintenance of order on the territory, of the Free City, in the event of the local police forces proving insufficient.

"With this object in view, the High Commissioner will, if occasion arises, request instructions from the Council of the League of Nations and will, if he thinks fit, submit proposals.

"(2) It will nevertheless be within the competence of the High Commissioner to anticipate the authorization of the Council and to address a direct invitation to the Polish Government to ensure the defence of Danzig, or 'the maintenance of order,' in the following cases:

"(a) in the event of the territory of the Free City being the object of aggression, threat or danger of aggression from a neighboring country other than Poland, after the High Commissioner has assured himself of the urgency of the danger;[7]

"(b) in the event of Poland being, for any reason whatever, suddenly and effectively prevented from exercising the rights possessed by her under Article 28 of the Treaty of November 9th, 1920.[8]

"In these two cases the High Commissioner should report to the Council the reasons for the action which he has taken.

"(3) As soon as the object in view has been achieved to the satisfaction of the High Commissioner, the Polish troops will be withdrawn.

"(4) In all cases where Poland has to ensure the defence of the Free City, the Council of the League of Nations may provide for the collaboration of one or more States Members of the League.

"(5) The High Commissioner, after consultation with the Polish Government, will present to the League of Nations a general report on the measures for which it may be necessary to provide in the above-mentioned cases.

"(6) The Council does not consider it necessary to decide at the present moment under what conditions the defence of Danzig by sea should be secured.[9]

"(7) The High Commissioner should, however, be asked to examine the

[6] *Official Journal,* September, 1921; p. 671.

[7] No provision was made for the defense of Danzig against Polish aggression, that being the one country wherein threats of invasion may arise.

[8] Art. 28 provides for free transit of Polish goods over Danzig.

[9] Poland acquires the defense only by land, that by sea being reserved by the Allied Powers.

means of providing in the port of Danzig, without establishing there a naval base, for a *'port d'attache'* for Polish warships."

This resolution was opposed by representatives of Danzig on the ground that it destroyed the concept of a Free City; also it was alleged that, under its provisions, a strike of harbor employees which interfered with Poland's exports and imports might be held to justify the summoning of Polish troops into the Free City. Thereupon, at a session held on September 16th, 1921, the Council passed a resolution requesting the High Commissioner to present a general report on the defense of Danzig; to be drafted after he had consulted with the Polish Government; and the Council, before discussing it, should consult its Permanent Military Commission.[10]

This resolution appears to be in fundamental disagreement with the Covenant. In that instrument, wherever there is danger of aggression, a member state is required to submit the question to the League; and if the other party is a non-member state, Article 17 requires the Council to invite it to accept the obligations of the Covenant. In this resolution, upon the mere invitation of the High Commissioner, and without bringing the matter to the attention of the Council, a Polish army may be ordered into Danzig. An appointee of the League is thus given authority whenever there is a threat of aggression or whenever Polish commerce through Danzig is stopped to invite the Polish army to enter Danzig; also he is authorized to invite Poland to make war upon any other state, member or non-member, whenever he thinks Danzig is in danger of aggression or whenever there is a threat of aggression. This appears to exempt Poland from the provisions of the Covenant, whenever the High Commissioner so decides, with respect to all neighboring states in relation to Danzig.

It may be argued that the Council, in passing this resolution, was acting in its capacity as protector of Danzig territory, under Article 102 of the Treaty of Versailles. But, if so, member states will probably wish to ascertain, in the event that the provisions of the Covenant and of the Treaty, both conferring powers upon the League, are in conflict, whether the Council may exercise powers derived from the Treaty when they appear to be in contradiction to the Covenant.

Danzig may not be used as a military base without the consent of the League. The Danzig constitution, and a resolution passed by the Council on November 17th, 1920, forbid it.[11] Nevertheless, on March

[10] *Minutes of the Fourteenth Session of the Council;* p. 141. No modification of the above resolution appears to have taken place as a result of this deflection.

[11] *Minutes of the Thirteenth Session of the Council;* p. 129.

5th, 1921, the Polish Government demanded that it be given a depot for storing materials, including explosives in transit through the port of Danzig. In June, 1921, the Council appointed a committee to investigate. It agreed that Poland was entitled to such a site but that it should be at a sufficient distance from dwelling houses. The Committee could not agree upon a specific site and the decision was left to the Harbor Board. The Board was of the opinion that there was no place in the harbor which could with safety be used, but proposed that if Danzig and Poland would assume the risk then the Harbor Board would agree to a site on the Isle of Holm, situated in the harbor, and specified the southwest end of the basin in this island. Poland refused this site and demanded the eastern end of the basin.

The High Commissioner, on April 7th, 1922, decided that Poland might occupy as a temporary measure the eastern part of the Isle of Holm on condition that it expedite the transit of war materials; also, whenever the amount of explosives exceeded 100 tons and remained for a period of more than 24 hours the Harbor Board should be notified; also, that a channel and basin near the mouth of the dead branch of the Vistula River should be built by the two governments and when completed, the Isle of Holm was to be vacated.[12]

On September 1st, 1922, the question on appeal came before the Council. Poland demanded that the decision of the High Commissioner be made permanent; that the space be enlarged and be used only by Poland; that its responsibility for damages be limited; and that its share of expenditures in enlarging the basin be made contingent upon the permanency of the Holm Island site.[13] The Council confirmed the decision of the High Commissioner. But on December 14th, 1923, it decided to institute an inquiry to be made by experts as to the best place for the creation of such a depot. On the basis of the report of the experts, the Council made a decision on March 11th, 1924, that the peninsula of Westerplatte, at the entrance of the harbor, was to be placed at the disposal of Poland, superseding the decision of April 7th, 1922.[14] Provisionally, for six months, Poland may continue using Holm Island. The peninsula is separated from the deep water port of Danzig by only a narrow canal; and a suburb across this canal, containing warehouses, factories and workmen's houses will thus continually face the danger of explosions.

[12] *Decisions of the High Commissioner,* 1922, published by the Senate of Danzig; p. 4.

[13] *Official Journal,* November, 1922; p. 1168.

[14] *Monthly Summary,* January, 1924; p. 305; April, 1924; p. 60.

The Polish Government retains soldiers in Danzig to safeguard Polish goods in transit. These goods consist of military supplies in transit between the ships and railways. As Danzig has its own police force, it was urged that Polish soldiers were unnecessary. But more particularly their presence was alleged to be in violation of a resolution, passed by the League Council on November 17th, 1920, which forbade Danzig to be used as a naval and military base.

Under a decision rendered February 4th, 1921, the High Commissioner permitted this detachment to remain, on the ground that Polish rights had not been sufficiently safeguarded by the Danzig police, inasmuch as certain thefts of goods had occurred. As the Harbor Board was not yet in full working order, the High Commissioner requested the Danzig authorities to permit this detachment to remain as caretakers, and suggested that the Polish authorities withdraw their arms, equipment and uniforms.[15] On June 23rd, 1921, the matter came before the Council on appeal and a compromise was effected by which these guards have the right to be armed and wear uniforms within a reserved area.[16]

Arms may not be manufactured in Danzig without permission from the League. On December 14th, 1920, the President of the Danzig Senate requested permission to manufacture for the Government of Peru, 50,000 rifles by a small arms factory in Danzig which belonged to the Allied Powers, until the latter should dispose of the property under Article 107 of the Treaty. The management of the factory was provisionally under the City of Danzig. The Council decided to consult the Conference of Ambassadors. On January 3rd, 1921, the Conference replied that it was absolutely opposed to such manufacture. The High Commissioner was of the opinion that, in view of Article 8 of the Covenant, it would not be desirable to continue the manufacture of arms, but owing to financial and economic difficulties and unemployment in Danzig, the factory might be permitted to continue the manufacture for a period of three years, under his supervision, thus allowing time to transform its nature.

It appeared that the factory was then engaged in manufacturing arms for the Polish Government, under a contract made prior to the establishment of the Free City, for the completion of which contract no authority had been requested. On February 26th, 1921, the Council decided that permission to manufacture arms or war material would be granted only under the most exceptional circumstances and author-

[15] *Decisions of the High Commissioner,* 1921; p. 4.
[16] *Minutes of the Thirteenth Session of the Council;* p. 31.

ized the rifle factory to remain open for the purpose of completing work undertaken before the creation of the Free City.[17] On May 22nd, 1921, the High Commissioner presented a report to the Council, describing the work and plans for the conversion of the factories. The Council on June 23rd decided that all manufacture of arms should cease and that the Conference of Ambassadors should be advised of the decision.[18] On July 30th, 1921, the rifle factory was closed.

It will be observed from these disputes that: (1) Poland obtained the right to defend Danzig by land; to use its military forces when its commerce is stopped and to take over police powers in Danzig if the existing forces prove insufficient. (2) Poland acquired a temporary naval base on Holm Island in the Danzig harbor and is now assigned a permanent base at the entrance to the harbor. (3) Poland may, within a designated area, use soldiers in uniform to protect Polish goods in transit through Danzig. (4) The manufacture of arms of any kind or description is prohibited. These interpretations in effect have constituted Danzig a military dependency of Poland.

CONTROVERSIES OVER FOREIGN AFFAIRS

Poland has the general right to conduct the foreign affairs of Danzig. Several questions concerning the general interpretation of the Treaty of Versailles and of the Polish-Danzig Convention were submitted to the High Commissioner. The first of these was a request of the President of the Senate of Danzig that the High Commissioner give a decision regarding the interpretation of Article 2 of the Polish-Danzig Convention, which provides that Poland shall conduct the Foreign Affairs of Danzig. On December 17th, 1921, the High Commissioner laid down the following principles: (1) Poland, when called upon by Danzig to conduct any foreign relations, has the right to refuse if the matter involved is clearly to the detriment of the important interests of the Polish State. (2) Poland has no right to initiate or impose upon Danzig a definite foreign policy which is clearly opposed to the well-being, prosperity and the good government of the Free City. (3) Poland, on the request of Danzig, will either undertake to carry out the wishes of Danzig or will give its reasons for refusal and discuss alternatives with the Danzig Government.[19]

A practical application of these principles was made necessary when the Polish Government, in negotiating a Treaty between Danzig and

[17] *Official Journal,* March, 1921; pp. 160-162.
[18] *Ibid.,* September, 1921; p. 659.
[19] *Decisions of the High Commissioner,* 1921; p. 70.

Memel, added a paragraph, concerning the duration of the Treaty, without consulting Danzig. The High Commissioner, on November 3rd, 1922, decided:[20] (1) Poland has the right to negotiate treaties. (2) The ratification of the Danzig Parliament is not required. (3) The Polish Government before ratifying a treaty must consult the Danzig Government, and, in the event of subsequent alterations, consultation must be held between the two Governments. (4) In the present instance, the objection not being to the provision itself, but to the precedent established, the Treaty should be accepted by Danzig.[21]

The question of the manner in which correspondence between Danzig and foreign countries should be carried on was raised by Danzig. The President of the Danzig Senate requested that letters should be addressed directly to the foreign state concerned and be marked "through the Diplomatic Representative of the Polish Republic." The High Commissioner held that any communications relating to the conduct of foreign affairs should be addressed to the diplomatic representative stationed in Danzig.[22]

On appeal to the League Council, representatives of the two Governments met in Paris on February 1st, 1923, and agreed that: (1) The Polish Government is ready to accept, in the German language, such correspondence from the Danzig Government. (2) On the specific request of Danzig, Poland will give all information that may result from the correspondence, or from any request for Poland to conduct certain foreign relations; and in so far as possible, Danzig will be furnished with copies of such correspondence. (3) The Polish Government will explain in such correspondence, that it is acting in Danzig foreign affairs by reason of the fact that it is authorized under the Treaty to conduct such affairs.[23]

The question of passports and visés has been one of continual irritation. Danzigers have especially resented traveling under Polish passports or having persons, entering Danzig, obtain Polish visés. On August 30th, 1921, the High Commissioner decided that Polish visés were not necessary to enable foreigners, other than Polish citizens, to

[20] *Decisions of the High Commissioner,* 1922; p. 41.

[21] A new question of Polish-Danzig relations is that of protecting the interests of Danzig citizens and organizations in Poland. The Council, at a meeting of March 11th, 1924, requested a Committee of Jurists to report by May 15th as to whether or not the League of Nations is competent for such protection. (*Journal de Genève,* March 12th, 1924.) M. Quinones de Leon (Spain) has been appointed *rapporteur.*

[22] *Decisions of the High Commissioner,* 1922; p. 46.

[23] *Official Journal,* February, 1923; p. 154.

enter the Free City unless the Government of Danzig desired that they be given.[24] It is reported that the High Commissioner has recently ruled that Danzig has the right to issue passports and that no Danzig national, against his will, can be compelled to provide himself with a Polish passport, either supplementary to or in place of, his Danzig passport.[25] Danzig nationals abroad who desire to claim protection from Polish diplomatic representatives may, at their option, request a Polish visé. Hitherto, Polish representatives have refused recognition to Danzig citizens who were abroad, unless they were provided with Polish passports.

The question whether Danzig should maintain direct judicial relations with Germany was raised by Poland. It was not willing to permit direct relations between the two governments, alleging such communications to be an infringement of Polish rights to conduct Danzig's foreign affairs. The High Commissioner decided on December 18th, 1921, that provisions were made in the Polish-Danzig Treaty for such direct relations between the local administrative and judicial officers and the neighboring districts of East Prussia; and, therefore, "Poland should give Danzig such facilities for arranging a treaty with Germany, dealing with judicial affairs, as she proposes to arrange herself with Germany." [26]

The right of Danzig to expel aliens was questioned by Poland. The occasion arose when Danzig authorities undertook to expel a Polish citizen and caused his arrest when he refused to leave. The Danzig Government had passed a decree authorizing such action. The Polish Government alleged that this was a discrimination and interfered with Poland's access to the sea. The Danzigers claimed that the decree was necessary to stop the influx of foreigners who increased unemployment, and who added to the housing difficulties and raised prices.

The High Commissioner, on December 16th, 1921, decided that the procedure followed by Danzig, in requiring registration of foreigners and retaining the right to expel them, was reasonable and just; but in the case of Polish citizens, when the Danzig Government had warned them to depart and they had refused, it should agree, as an act of courtesy, to inform the diplomatic representative of the Polish Government; and if within seven days he had not notified the Danzig Government that he wished to protest, the order would become effective. In the event of disagreement, appeal could be taken to the High Com-

[24] *Decisions of the High Commissioner,* 1921; p. 19.
[25] London *Times,* February 4th, 1924.
[26] *Decisions of the High Commissioner,* 1921; p. 74.

missioner. The particular individual over whom this question arose was permitted to remain but without having any claims against the Government of Danzig for its action.[27]

This decision, on appeal to the League Council, led to the conclusion of an agreement between Poland and Danzig. It was based on a report adopted by the Council on May 13th, 1922.[28] The agreement provided that expulsion should not be effected without notification to the diplomatic representative of Poland and that appeals could be made to the High Commissioner and Council.

The right of the Polish diplomatic representative to welcome a foreign fleet in the Danzig Harbor was raised by the arrival of French war vessels. The Danzig Government contended that the Polish representative was authorized to act only as a medium of communication between the Polish and Danzig Governments; that the Senate alone had the right to welcome a foreign fleet which desired to pay a visit to Danzig. Poland contended that the duty of receiving such fleets was a part of foreign affairs committed to its jurisdiction. The High Commissioner held, on August 23rd, 1922, that the Polish Government had not the right to welcome officially in Danzig waters and on Danzig territory a foreign fleet which visits the Free City.[29]

On appeal to the Council, this decision was replaced by an agreement between the parties to the effect that (1) when warships visit Danzig, the first official visit of the commander will be to the Danzig Senate, which will welcome him on behalf of the Free City; (2) the Polish representative shall have the right to be paid an official visit by the commander on behalf of his Government and to salute the ship either on board or in his official residence; and (3) the Polish Government will conduct the correspondence relative to such visits, and will make the necessary arrangements. On January 29th, 1923, the Council approved of this agreement.[30]

Danzig claimed the right to send representatives to international conferences. It requested that its delegates should be allowed a separate and direct vote, in so far as economic questions were concerned; and a vote, through the Polish representative, on political affairs.

The High Commissioner held, on August 24th, 1922, that Danzig had not the right to separate representation and voting at such con-

[27] *Decisions of the High Commissioner,* 1921; p. 60.
[28] *Official Journal,* June, 1922; p. 673.
[29] *Decisions of the High Commissioner,* 1922; p. 24.
[30] *Official Journal,* February, 1923; p. 152.

ferences; but its representatives could take part in discussions which affected the economic well-being of the Free City; and that his decision did not affect the right of the Council or Assembly of the League to authorize a delegate from Danzig to take part and vote in any such congress.[31] This decision was supplemented by an interpretation given by the High Commissioner on October 7th, 1922, to the effect that, in the event of the Danzig and Polish representatives failing to agree on whether the question under discussion was political or economic, Danzig could not take part; but the justice of the decision should be subject to later review.[32]

On appeal to the Council on January 27th, 1923, Danzig and Poland reached an agreement that Danzig representatives when they attended such conferences should be listed separately and vote independently on all economic questions. Also, it was agreed that the Danzig delegates, in discussing a question which both governments considered economic, might express their views.[33]

The principles established by the settlement of these disputes over foreign affairs include: (1) The right of Poland to refuse to conduct any foreign affairs on behalf of Danzig which are, in the judgment of the Polish Government, to the detriment of Poland. (2) Poland may not impose on Danzig a foreign policy against its interests. (3) Poland may refuse to carry out the wishes or the instructions of Danzig. (4) Ratification of treaties or foreign agreements by the Danzig Senate is unnecessary. (5) The Polish Government should consult with the Danzig Government, when negotiating a treaty, and keep it informed concerning transactions, and, whenever possible, furnish it with copies of correspondence. (6) Persons may enter Danzig without Polish visés and Danzigers may use exclusively their own passports. (7) The right to expel aliens is regulated by a special agreement which makes expulsion a long-delayed process of decision and appeal. (8) The Polish representative may welcome the commander of a foreign fleet after he has been received by the Danzig Government, but all arrangements for such visits are conducted by the Polish Government. (9) Danzig may send representatives to international conferences, but whether they vote or not depends upon the opinion of the Polish representatives as to what is economic or political. These decisions leave no doubt that Danzig is a political dependency of Poland.

[31] *Decisions of the High Commissioner,* 1922; p. 30.
[32] *Official Journal,* March, 1923; p. 258.
[33] *Ibid.;* p. 258.

TRANSIT AND ECONOMIC AFFAIRS

The ownership and control of the railways in the territory of Free Danzig is vested in the Polish Government. A dispute arose in the summer of 1921, by reason of the failure of the Governments of Poland and Danzig to reach an operating agreement. Three parties claimed the right of control—the Harbor Board established under the Polish-Danzig Convention to deal with all questions affecting the port; the Danzig Government, which had control of the local lines; and the Polish Government, which had control of all other lines. The question was which railways pertained especially to the Harbor and which railways served the primary needs of the City.

The High Commissioner decided that in order to carry out the authority vested in the Harbor Board to control the lines within the City it would have to create an administration which would be very expensive; therefore, as the Polish Railway Administration was at hand and deeply interested in the success of the port, it might be entrusted with the exercise of these functions. He, therefore, held: (1) That the ownership, control and administration of existing railways which specially serve the port, belonged to the Harbor Board, except the tramways and narrow gauge railways, which were assigned to the Free City authorities. (2) All other railways belonged to Poland, including the broad gauge railway. To overcome the difficulties of this division within Danzig territory, he decided that the Harbor Board should make use of the Polish Railway Administration and should attach three delegates to that Administration to convey to it the wishes and requirements of the Harbor Board.[34] The Danzig local government was also authorized to attach a representative to the Polish Railway Administration, in order to keep it informed concerning the requirements of the Free City. This decision was to be accepted, subject to appeal to the Council of the League.[35]

[34] *Decisions of the High Commissioner,* 1921; p. 13.

[35] Were the New York City transit system to be divided as follows, it would constitute a somewhat analogous situation from the operative point of view. (1) Give to a foreign country, the Canadian Railway Administration, for instance, the control of all rail and river traffic outside of New York City and the terminals such as the Grand Central, Pennsylvania and ferry stations within the City. (2) Give to a Harbor Board composed of Canadians and Americans the control of all sea shipping, including docks, wharfage and facilities. (3) Give to the New York City Administration the control of the connecting lines between the rail and river terminals and the sea terminal. Then follow the Danzig plan and undertake to join them together, for administrative purposes, by suggesting to the Harbor Board that it assign three representatives to sit on the Canadian Railway Administration; and by suggesting to the New York City Administration that it appoint one representative to sit on the Canadian Railway Administration,

The Polish Railway Administration desired to administer from Danzig certain railways in Poland. The Polish authorities, in this instance, suggested, as a matter of expediency, efficiency and economy, that one railway administration with headquarters in Danzig, extending over lines from Danzig into Polish territory would better serve its interests. This use of Danzig as a headquarters to promote transit interests in Poland was opposed by the Free City. In answer to the opposition aroused, Poland suggested, as an alternative, that the administration of the Danzig section of the railways be removed to Poland. Whether Poland had the right to remove its administration of Danzig railways to Poland, the High Commissioner was not requested to decide; but he held, on December 12th, 1922, that Poland had no legal right to establish in Danzig, except by agreement with the Free City, a railway direction which dealt with the management of any railways other than those situated in Danzig.[36]

From this decision, the Polish Government appealed to the Council. The representatives of the two Governments, in consultation with members of the League Secretariat, agreed that the above decision should be inoperative and that they would conduct negotiations along the following lines: The Polish Railway Administration will retain offices in Danzig and *in principle* its direction will remain unchanged; and it will reorganize the management in accordance with plans laid down by experts. Should no final agreement be reached by December 31st, 1923, each Government reserves the right to revert to the legal position established by the decision of December 12th, 1922.[37]

The activities of the Polish Railway Administration in Danzig were in conflict with sovereign rights. Several questions arose concerning the administration of the broad gauge railway, which was under the control of Poland and the means of transit between Danzig and outlying territory. The most important of these questions were disposed of by the High Commissioner on September 5th, 1921, as follows:[38] (1) Poland

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on the theory that it is the most efficient and is already in the field. The situation in New York will be similar to that in Danzig. In New York, alien Canadians would control the situation and there would be endless strife and bad feeling. In Danzig, alien Poles control the situation, and the result is identical. Furthermore, New York, under such conditions of strife and disagreement, would tend to become a stagnant commercial center, untrustworthy for shippers. Such is the result in Danzig.

[36] *Decisions of the High Commissioner,* 1922; p. 52.

[37] According to the *Journal de Genève* of June 10th, 1924, a definite agreement has been reached.

[38] *Decisions of the High Commissioner,* 1921; p. 29.

desired to impose the Polish language upon all persons employed on or using this railway in Danzig. The High Commissioner held, as the majority of persons using the railway spoke German, that the Polish Railway Administration should use that language in all its dealings with the Danzig public; and that all notices, time-tables and tickets should be printed in German. (2) Poland desired to use Polish currency in operating the railways. The High Commissioner held that, as German currency was employed within the Free City of Danzig, all money paid to or by the people or by the Government should be in that currency. (3) The question was raised whether the Polish Railway Administration should pay taxes to the Free City. The High Commissioner decided in the negative. (4) The Polish Government desired to establish courts of law to hear questions arising in connection with the railway. The High Commissioner held that this would be an exercise of sovereign rights which Poland did not possess. (5) The Polish Government claimed that the Danzig police employed on their premises should be subject to their control. The High Commissioner held that they should conform to the wishes of the Polish Railway Administration, but the method of carrying on their work must be in accordance with the general police laws and regulations of the Free City. (6) The question arose whether German regulations regarding sickness, old age and accident insurance should be applied to employees of the Polish Railway Administration. The High Commissioner held that these were applicable even though such laws were more favorable than those in existence in Poland. (7) The manner of filling vacancies on the railway was placed before the High Commissioner. He decided that the treatment should be fair, but not necessarily equal; and that Polish workmen and officials should not be imported in such quantities that the interests of the Danzig railway men would suffer. The general principle to be followed was that priority should be given to citizens in Danzig, especially to those families which have been employed for many years and where the children wished to follow the trade of their parents. The decision applied only to the working staff. (8) The question arose concerning the amount to be paid to Danzig when the railways were handed over to the Polish Railway Administration. The High Commissioner decided that the first payment should be fifty million marks, the balance to be settled by agreement between the two Governments. (9) The Polish Government abolished, in the main station of the Danzig railway, a long-established organization for the sale of sleeping car and other tickets and installed a Polish firm. The High Commissioner, on December 31st, 1922, held that Poland was not

justified in taking this action without considering the objections of the Danzig delegates on the Polish Railway Administration and that the change should have been settled by negotiation.[39] (10) The question of establishing a branch of the Polish Postal Service in certain rooms of the main railway station was decided in the negative by the High Commissioner on December 23rd, 1922. He stated that the sorting of letters should be performed in the building already allotted to Poland for the purpose or in the Polish postal railway wagons.[40] Poland appealed to the Council and the parties met with the members of the League Secretariat and agreed that such a service should be installed, provided the public did not have access to it and that it should deal only with mail from overseas or coming by rail from Poland, and that this agreement did not change the legal position.[41] The Council confirmed this agreement on April 19th, 1923.[42]

Poland claimed control over the Vistula River, which is the main artery of trade between Danzig and the surrounding territory. Poland asserted that under Article 104 of the Treaty it was given control of the entire Vistula; and the Convention between the two Governments authorized the Harbor Board to control only the dead waters within the territory. The Free City claimed a portion of the live Vistula and insisted that the Harbor Board was created as a compromise by which both governments had renounced certain rights in favor of the Board; also that the agricultural interests of the delta depended upon the preservation of the banks of the river.

The Harbor Board, by vote of its neutral president, decided that it

[39] *Decisions of the High Commissioner,* 1922; p. 60.
[40] *Ibid.;* p. 56.
[41] *Official Journal,* June, 1923; p. 561.
[42] Danzig and the Saar present a marked contrast. In the Saar, the League has administrative authority, and has abandoned its task to another; in Danzig, it has less authority and is constantly on the alert. In Danzig, the people seek and claim justice and receive it from the High Commissioner. They are heard when they go to Geneva. In the Saar, the people also seek justice and are denied; and they are not heard when they appeal to the League. In Danzig, the encroachments of Poland, as aggressive as those of France in the Saar, are resisted; in the Saar, they are permitted. In Danzig, an issue is met; in the Saar, it is evaded. Also, in Danzig, there is no future plebiscite with a rich prize, whereas in the Saar, it explains much of the present activity. The explanation of the contrast does not lie in the attitude of the League being different in each instance, for, as has been seen, whenever it deals with a Danzig decision it applies the Saar Method. Rather does it seem to lie in the fact that in Danzig, British ideals of government are constantly applied, whereas, in the Saar, they have never been adopted; and in the fact that in Danzig, the prize of a port can only be won by war, while the Saar may be won by politics.

should administer that part of the river within Danzig territory. The High Commissioner, on September 1st, 1921, sustained this decision on the ground that the Harbor Board was eminently fitted for such control.[43] On January 12th, 1922, the matter, on appeal, came before the Council, which passed a resolution requesting the representatives of Poland and Danzig to discuss the question further and to inform the Secretary-General whether a solution could not be expected by direct negotiation.[44]

Poland claimed priority for its citizens in leasing property from the Harbor Board. On January 20th, 1922, the question came before the Harbor Board, which held: (1) No priority in letting ground and warehouses existed in favor of Polish citizens; (2) the Board could fulfill its obligations without granting such priority; and (3) it would bear in mind the requirements of Poland. The Polish Government refused to accept this decision and the question was submitted to the High Commissioner. On October 27th, 1922, he applied the following principles: (1) It is necessary to attract Polish imports and exports; (2) Polish trade demands more facilities than Danzig trade because the latter is already provided for; (3) when any building is to be leased, a tenant is to be selected who, owing to his trade, commercial status and other conditions, is most likely to improve the activity of the port; and (4) in the event of a Polish and Danzig firm being in competition, both being equally desirable as tenants, preference will be given to the one of Polish nationality.[45] On appeal to the Council, members of the Secretariat and the parties effected an agreement that this decision should remain in force for two years, when the appeal may be reopened. On April 19th, 1923, the Council approved of this agreement.[46]

The question arose concerning the official language to be used by the Harbor Board. On December 5th, 1922, the High Commissioner decided that the German and Polish languages had equal rights and the President should decide which language should be used on a particular occasion.[47] This decision was appealed to the Council. The parties met with members of the Secretariat and reached an agreement to modify this decision, to the effect that the President should take into con-

[43] *Decisions of the High Commissioner,* 1921; p. 24.
[44] *Official Journal,* February, 1922; p. 95.
[45] *Decisions of the High Commissioner,* 1922; p. 33.
[46] *Official Journal,* June, 1923; p. 560.
[47] *Decisions of the High Commissioner,* 1922; p. 49.

sideration the opinion of the one whose language was to be excluded and that a practical basis should determine his judgment. On April 19th, 1923, the Council approved of this agreement.[48]

Poland contended that it had the privilege under its Treaty rights to establish a postal, telegraph and telephone service in Danzig, communicating directly with Poland. Also, it insisted upon establishing post offices within Danzig territory and transporting mails in any manner it selected. The Danzig Government contended that this right was limited to only one post office, which must be within the limits of Danzig, and that during this transit all communications must be sealed and no communications permitted elsewhere. The High Commissioner, on May 25th, 1922, held that the postal service should include any route selected by Poland from one place selected in Danzig to one or more places within Polish territory, and that no messages could be received or delivered *en route,* which latter plan would, in effect, monopolize the local service.[49]

The Prussian Government, before the war, conferred upon certain banks in Danzig the right of priority of purchase whenever a person of Polish nationality desired to sell his property. The law ceased with the Peace Treaties; but a new law was passed by the Danzig Parliament, giving to the Department for the Creation of Small Holdings a similar right whenever real estate, exceeding twenty-five hectares, was for sale. The Department having exercised this right in the sale of certain lands, the Polish Government appealed to the High Commissioner on the ground that the right had passed to the Reparation Commission. The Commissioner held, on February 28th, 1921, that the case was not one in which he could arbitrate, as only one party to the dispute desired arbitration.[50] On June 18th, 1921, the question came before the Council. The representatives of Poland and Danzig agreed to accept a proposal that the Council transmit the documents to the Reparation Commission, requesting it to give an opinion. In the meantime, the Courts were to suspend further action.[51] On August 24th, 1921, the Reparation Commission replied that it was not competent to deal with the question, and that the settlement of this dispute by itself might prejudice the whole question of the Polish income contracts. The Council, therefore, suggested that the Polish and Danzig repre-

[48] *Official Journal,* June, 1923; p. 561.
[49] *Decisions of the High Commissioner,* 1922; p. 15.
[50] *Ibid.,* 1921; p. 10.
[51] *Official Journal,* September, 1921; p. 669.

sentatives again discuss the matter without recourse to a more complicated procedure.[52]

Poland claimed certain extra-territorial rights in the territory of Danzig. These claims were opposed by Danzig on the ground that they were not necessary to insure to Poland a right of free access to the sea and were incompatible with the independence of Danzig. Poland alleged that the Polish-Danzig Convention was not a treaty between two equal states, but merely the development of the rights, given to Poland under the Treaty, which had created the Free City exclusively in the interests of Poland; also that certain properties in Danzig having been given to Poland, such property and Polish ships were exempt from the judicial and executive authority of the City and from the control of the Harbor Board. The High Commissioner, on December 6th, 1921, decided that: (1) The Harbor Board must retain its full powers as laid down in the Convention; (2) Polish property in the territory is not to be taxed, but Polish ships shall not be exempt from harbor dues or other charges or regulations imposed by the Harbor Board; and (3) all persons entering Danzig territory are subject to its laws and regulations.[53]

It will be observed that the economic domination of Danzig by Poland was sought in the following ways: (1) Extension of control over railways; (2) installation of Poles in the railway service; (3) introduction of the Polish language and currency in Polish public service; (4) installation of Polish supervision of police in the railway stations; (5) control of the Vistula River within Danzig; (6) priority in the leasing of property for trade purposes; (7) imposition of the Polish language upon the Harbor Board; (8) control of the postal service by establishing branch stations; (9) and by claims to extra-territorial rights. The decisions rendered by High Commissioner Haking have prevented these encroachments from being successful, although many of his decisions have been modified by the Council, upon recommendation of members of the League Secretariat; and some of the principles which the High Commissioner established have been destroyed in the compromises thus effected.[54]

[52] *Minutes of the Fourteenth Session of the Council;* p. 82.

[53] *Decisions of the High Commissioner,* 1921; p. 44.

[54] When the writer visited Danzig in June, 1921, and again in July, 1922, many of these disputes were in progress. When Danzig was again visited in July, 1923, the situation had shifted. The Polish Government had experienced several setbacks in its policy of economic and political domination of Danzig and was apparently resorting to economic pressure of another order. As has been pointed out, Danzig is wholly dependent upon Poland for its food supply

COMMENTARY

Danzig has four charters—the Treaty of Versailles, the Polish-Danzig Convention, the Free City Constitution and the Covenant—which influence its administration. It has six political bosses: (1) The Allied Powers, who own the territory; (2) the Polish Government, which operates its transit, customs and economic affairs; (3) the High Commissioner, who settles disputes; (4) the Council of the League of Nations, which hears appeals; (5) the Danzig Senate, which maintains the local government; and (6) the Harbor Board, which manages the port.

Danzig is a Free City in its domestic life; a military dependency of Poland by land and of the Allied Powers by sea, having no arms, manufacturing no ammunition, and having no military or other means of defense; and it is an economic dependency of Poland as to transit and communication, food supplies and raw materials. The Free City is a political dependency of Poland in all affairs affecting the outside world; but in such matters as language, education, citizenship, property rights and local administration, it has managed to maintain political independence.

The High Commissioner has maintained a high standard of justice and impartiality which has preserved the city from conquest, revolution or destruction. But the stability sought by him has been at times undermined by the compromises substituted by the political expedients applied on appeal to the League of Nations.[55] The concept of a Free

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and raw materials. The differences in exchange prohibited it from importations by sea. The diminution of supplies from Poland, together with the prohibitory customs duties and regulations, had brought Danzig to a state of starvation. Certain foods were unobtainable at any price, bread riots were frequent, and slow starvation was taking place throughout the city. Whatever the cause, the population believed that starvation was being imposed by Polish policy, and the belief added to the bitterness of the constant struggle to prevent Polish encroachments, in many ways not herein mentioned, as well as along the broader lines of policy. The Nationalist spirit was given a strong impetus by the sufferings of the people, while, at the same time, there was deep appreciation of what the High Commissioner had accomplished for justice within the limits permitted to him. The establishment of a local currency seems to have raised prices and increased unemployment, as the money has no standard value outside of Danzig.

[55] At the twenty-ninth session of the Council, June, 1924, no questions concerning Danzig were considered, since agreement had been reached between the parties, concerning the outstanding questions of rights of the Harbor Board to contract loans and disposal of its property; participation of Danzig in the work of the Berne Railway Conference; and issuance of passports to Danzigers. (L. of N. *Monthly Summary*, May, 1924; p. 96.)

City, as conceived by the Peace Conference and as protected by the League, with its present-day stagnation of commercial life, unemployment, starving and embittered people, steeped in racial controversies, offers a contrast to the Free City of the Hanseatic League.[56]

[56] Recent reports state that a Polish-French industrial society has undertaken to build a new port at Gdynia, a few miles west of Danzig, and to connect this port with Poland by a railway not crossing Danzig territory. The harbor is to have a capacity of 3,000,000 tons and to be ready for use in eight years. Should this prove true, Danzig, wedged between the German port of Königsberg in East Prussia and the new Polish port on the Polish corridor, and serving neither Poland nor Germany, has a doubtful future.

CHAPTER VII

THE HYPOTHESIS OF PEACE IN UPPER SILESIA

Upper Silesia lies north of the Carpathian Mountains in the area of Europe where Slav and Germanic races meet. Since the earliest historical times it has been alternately colonized by Germans and Poles. Nominally under the German Empire of the Hapsburgs, through the sixteenth and seventeenth centuries, in effect the country was divided into small dukedoms of both races in continuous strife with each other. In the eighteenth century the German influence became predominant. Frederick the Great of Prussia, having gained the territory for his kingdom, established German colonies and laid the foundations of the iron and lead industries. In the early nineteenth century coal was found and with incredible rapidity Upper Silesia developed into one of the most important industrial districts of Germany.

The partition of Upper Silesia is a unique experiment in the application of mathematical formulæ to human relations. It was proposed by the League of Nations as a way of settling a dispute of long standing between Great Britain and France. As finally recommended and accepted by the Supreme Council, the solution consisted of a hypothesis and of an economic shock absorber in the form of a political convention. The problem to which this hypothesis was applied may be stated as follows:

Given a territory of 4,100 square miles, inhabited by a population of 2,060,000; within this territory a triangle with an area of less than 150 square miles, inhabited by a population of nearly 1,000,000,[1] a district of noise, smoke and coal dust, crowded with factories, intersected by railway lines, trolleys, waterworks and electric plants, with homes and schools, all developed from the immense wealth of the coal mines owned by the Prussian State; and given two great Allied Powers with opposed interests, charged with the task of dividing this territory by means of a plebiscite and according to the geographical and economic conditions of the locality; the problem was to draw a line dividing the territory: (a) according to the wishes of the population;

[1] *U. S. Commerce Reports,* 1921, No. 13; p. 796.
This triangle comprised the countries of Kattowitz, Beuthen and Zabrze (Hindenburg), together with the southern part of the county of Tarnowitz, the city-county of Königshütte and the city of Gleiwitz.

(b) according to the desire of one or the other of the Great Powers to benefit from the Prussian States mines.

The factors to be taken into consideration were, therefore: (a) the wish of the population expressed through a plebiscite; (b) the nature of the territory, indicating that the industrial triangle was economically indivisible; (c) the interests of France and Poland in agreement with (b), as to their desire that the triangle should not be divided, but in disagreement with (a), as to the triangle being ceded to Germany.

TREATY FOUNDATIONS

It will be remembered, according to the early drafts of the Treaty of Versailles, that Upper Silesia was to have been ceded to Poland. But objections from Germany, supported by Great Britain, forced a compromise. This compromise was a plebiscite to be held within eighteen months after the Treaty was signed; as provided in Articles (Art. 88, last par.)

"The boundaries of Poland not laid down in the present Treaty will be subsequently determined by the Principal Allied and Associated Powers." (Art. 87, par. 3).

"Germany hereby renounces in favor of Poland all rights and title over the portion of Upper Silesia lying beyond the frontier line fixed by the Principal Allied and Associated Powers, as the result of the plebiscite." (Art. 88, last par.).

In order to carry out this plebiscite, an annex to Articles 87-88 of the Treaty provided that within fifteen days from the coming into force of the Treaty, German troops should evacuate the area, the Workmen's and Soldiers' Councils should be dissolved and the military unions disbanded. The plebiscite area was then placed under the authority of an international commission of four members, to be named by the United States, France, Great Britain and Italy. The International Commission consisted of the following: General Le Rond (France), Chairman; Colonel Percival (Great Britain), General de Marinis (Italy).[2] The duties of the Commission were prescribed in paragraph 3 of the Annex to Articles 87-88, whereby it was to interpret the powers conferred upon it; to determine to what extent it would utilize them; and no changes were to be made in existing laws without its consent. The Commission was to maintain order with the help of the Allied

[2] The Treaty was signed by Germany with the understanding that the United States would be represented on this Commission. The refusal of the United States Senate to ratify the Treaty changed the character of this Commission, depriving it of a disinterested member and placing it under the chairmanship of an interested member.

troops or by the establishment of local *gendarmerie*: it was authorized to take steps to secure the secrecy and fairness of the vote and to order the expulsion of any person who attempted to distort the results of the plebiscite by methods of corruption or intimidation. Decisions were to be taken by a majority vote, and the Commission was empowered to employ technical assistants from among the local population.

The regulations, prescribed in the Annex, for voting in the plebiscite provided that the vote should be taken on a date to be determined by the Allied Powers, but not sooner than six months nor later than eighteen months after the establishment of the Commission. The right to vote was given to all persons who had completed their twentieth year on the first of January of the year in which the plebiscite was held; or who were born in the area; or were domiciled there "since a date to be determined by the Commission, which shall not be subsequent to January 1st, 1919, or who have been expelled by the German authorities and have not retained their domicile there." Persons convicted of political offenses were allowed to vote. The significant provisions were the following:

"Every person will vote in the commune where he is domiciled or in which he was born, if he has not retained his domicile in the area.

"The result of the vote will be determined by communes according to the majority of votes in each commune. (Par. 4.)

"On the conclusion of the voting, the number of votes cast in each commune will be communicated by the Commission to the Principal Allied and Associated Powers, with a full report as to the taking of the vote and a recommendation as to the line which ought to be adopted as the frontier of Germany in Upper Silesia. In this recommendation regard will be paid to the wishes of the inhabitants as shown by the vote, and to the geographical and economic conditions of the locality." (Par. 5.)

The first difference of opinion in the International Commission arose over the interpretation of these regulations before the plebiscite was taken. The majority of the Commission fixed January 1st, 1904, as the date before which residence in Upper Silesia should confer the right to take part in the plebiscite.[3] The majority also decided that any person born in the plebiscite area had the right to vote, whether or not he had retained his domicile. The representative of Great Britain dissented; but the Supreme Council, at a meeting on November 25th, 1920, confirmed the interpretation given by the majority; and, as a compromise, proposed to the German and Polish Governments that such electors as were not domiciled should vote somewhere outside of

[3] *Minutes of the Extraordinary Session of the Council,* August 29th-October 12th, 1921; p. 13.

the plebiscite area, or upon different dates. The former proposal was rejected; the latter was accepted, but not carried into effect, on the ground of being impracticable. Thus, the British point of view was rejected as to the interpretation of the Treaty and defeated as to the proposed compromise.

RESULTS OF THE PLEBISCITE

The plebiscite was held on March 20th, 1921, and resulted as follows: 1,185,000 votes were cast, of which 705,000 were in favor of Germany and 480,000 in favor of Poland.[4] In the industrial triangle which was the prize desired by both Poland and Germany, 488,000 votes were cast, of which a majority, 270,000, were in favor of Germany.[5] It, therefore, appeared, from the total vote in all Upper Silesia and also in the coveted territory, that a majority was in favor of remaining with Germany.

But the Treaty specified that the vote *by communes* was to be one of the determining factors in any division of territory. The vote showed that out of 1261 communes, 664 had voted in favor of Germany, distributed as follows: In the northern and western districts, largely agricultural and containing 30 per cent. of the voters, five-sixths pronounced themselves for Germany; towards the south, in a district inhabited by 15 per cent. of the voters, where the population was engaged in both agriculture and mining, a two-thirds majority was in favor of Poland. In the triangle, where 55 per cent. of the voters lived, 29 per cent. were for Germany, chiefly in the cities; while 26 per cent. voted for Poland.[6] The communes and cities in the triangle formed such an intricate industrial and commercial unit that a literal application of this Treaty provision became an impossibility if the economic life of Upper Silesia was not to be disrupted.

But the Treaty had provided a corrective for such a contingency as this mixed vote. It stipulated when the International Commission made its report to the Principal Allied Powers it should recommend a frontier line; and in arriving at a decision concerning this line, regard should be paid to the wishes of the inhabitants, as shown by the vote, and to the geographical and economic conditions of the locality. These two directions were placed in such juxtaposition that it was clearly the intention of the framers of the Treaty that both were to be applied in the determination of the line of demarkation.

[4] *U. S. Commerce Reports,* 1921, No. 13; p. 797.
[5] Bourgeois: *L'oeuvre de la Société des Nations,* p. 259; [6] *Ibid.;* pp. 258-259.

THE PREDICAMENT OF THE ALLIED POWERS

In undertaking to apply these two provisions, the members of the International Commission disagreed. The contest which had been waged in the Peace Conference broke out afresh. The British representative insisted that the triangle was indivisible, according to the vote and to economic conditions, and should be left intact and awarded to Germany. The French Chairman of the Commission was unyielding in his determination that the triangle be awarded to Poland.[7]

This disagreement created a deadlock in the International Commission, which found it impossible to recommend a line of demarkation to the Principal Allied Powers. As the Inter-Allied Commission could not agree on a report, as provided for by the Treaty, each one of the three Commissioners made a report to his own Government, and in this roundabout way the question returned to the Supreme Council.

The question was again taken up by the Supreme Council for adjudication; but there the conflicting opinions of France and Great Britain were as unyielding as in the International Commission. In the meantime, disorder and rioting prevailed in certain parts of the Upper Silesian territory, reaching a climax in May, 1921, in a Polish insurrection led by M. Korfanty, who had been the Polish plebiscite commissioner; making a decision urgent.[8] The differences being irreconcilable, France and Great Britain agreed, on July 28th, 1921, to appoint a Committee of Experts to solve the problem. This Committee was not more fortunate and was reported to have reached the following conclusions:[9]

[7] It is alleged that before the plebiscite took place, a French controller was placed over the Prussian State mines and another joined to the Upper Silesian "Berg und Hüttenmännischer Verein," a private association of mine-owners. In 1920, before the division of the territory, the French Director of the Economic Department stationed at Oppeln, M. Denis, concluded an agreement with Czechoslovakia for the exchange of Czechoslovak wood for Upper Silesian coal. These allegations would indicate a prearrangement with regard to the disposition of the mines; proof seems to be furnished by the fact that the Prussian State mines allotted to Poland are now controlled by a French-Polish Society, the "Skarboferm," founded in February, 1922. On the Executive Board of this Society there are six Poles and six Frenchmen; the chairman is M. Korfanty (leader of the insurrections at the time of the plebiscite); the chief manager is M. Remaux, a French engineer. The capital was originally 50 million German marks, soon raised to 300 million, one-half of which was provided by France and the other half by Poland.

[8] It is contended that this was not an insurrection of the Polish inhabitants of Upper Silesia, but was stimulated from the outside.

[9] *Minutes of the Extraordinary Session of the Council,* 1921; p. 15.

"The Committee reached entire agreement as to the legal interpretation of the Treaty; it was therefore led to reject the solution which favoured the handing over of the territory in its entirety and which considered the results of the vote as a whole. It also gave general indications as to the degree of importance to be assigned to the geographical and economic conditions referred to in the Treaty. On the other hand, it did not succeed in reaching an agreement on a frontier line. In particular, difference of opinion was revealed as to the right method of defining and describing the industrial and mining area of Upper Silesia, one delegation isolating in this area an 'indivisible triangle' which could be separated from the southern part of the area, and which contained a German majority, another maintaining that the mining and industrial basin formed a single unit and that it was not possible to imagine the separate existence of the 'industrial triangle.'

"The Committee succeeded in determining, in the centre of the indivisible area, a certain number of indivisible groups, some of which had a Polish majority, others a German majority.

"The Committee were unanimously of opinion that the frontier line, wherever it might be drawn, could not pass through either one or other of these groups, which, moreover, were more or less intimately connected with each other.

"The Committee could not agree, on the other hand, as to what extent these connections prevented the tracing of the frontier line separating one set of groups from another."

In this predicament, the Principal Allied Powers agreed to refer the dispute to the League of Nations; and the Supreme Council, in a letter dated August 12th, 1921, informed the Acting Chairman of the League Council that it had decided:[10]

"In pursuance of Article 11, paragraph 2, of the Covenant of the League of Nations, to submit to the Council of the League the difficulty attending the fixing of the frontier between Germany and Poland in Upper Silesia, and to invite the recommendation of the Council as to the line which the Principal Allied and Associated Powers should lay down."

On August 24th, the Council received the documents and reports of the International Commission and of the Committee of Experts. Accompanying this data was a memorandum which contained the following statement:[11]

"In view of this situation, the Supreme Council decided on August 12th to have recourse to the Council of the League of Nations . . . each of the governments represented having in the course of the discussion solemnly undertaken to accept the solution recommended by the Council of the League of Nations."

[10] *Minutes of the Extraordinary Session of the Council,* 1921; p. 7.
[11] *Ibid.;* p. 8.

It will be observed that the Supreme Council submitted to the League Council but one specific matter, namely, the request to recommend a line of demarkation which the Principal Allied Powers should lay down.

THE COUNCIL ORGANIZES FOR WORK

The Council met on August 29th, 1921, to consider the question, as submitted. The Acting President of the Council presented a report, summarizing the facts. A Committee of Four was appointed to examine the question. The members were M. Hymans (Belgium), M. Wellington Koo (China), M. da Cunha (Brazil) and M. Quinones de Leon (Spain).[12] This Committee of Four proceeded to appoint two experts: M. Hodac, Secretary-General of the Federation of Czechoslovak Industries, and M. Harrold, Director of the Railways of Toggenburg and Professor at the Zürich University.

The Committee of Four then instructed the two experts to study the following questions: Transports, distribution of water and electric power, exchange of combustibles and raw material, financial organization of industries, rights of concessions, customs regime, social legislation and other related questions. Concerning the work of this Committee, M. Bourgeois (France), member of the Council, observed:[13]

"The experts had at their disposal an abundant documentation (reports of the experts for the Allied Powers, of the International Labour Bureau, of the International Syndical Federation, statistical works and official publications, etc.) They questioned the President and the Secretary of the Upper Silesian Berg and Hüttenmännischer Verein (of German nationality) and a Polish engineer inhabiting the region; also two representatives (a Pole and a German) of the principal labor organizations. Numerous people (Germans and Poles) had come to Geneva on their own initiative to bring their testimony on the economic problems, the study of which had been entrusted to the experts, but the experts decided to hear only the persons they had chosen themselves, having made sure of their competence and authority.

[12] The personnel of this Committee aroused instant criticism and revived the Franco-British differences of opinion. Typical of these criticisms was that appearing in the London *Outlook,* as follows: "M. Hymans, the Belgian delegate, an ardent Francophile, had various grievances against Mr. Lloyd George, dating back to the time of the first Peace Conference. M. Wellington Koo, the Chinese delegate, could not afford to disregard France's wishes, knowing that France is going to Washington prepared to back China against Japan. As for the Spanish and Brazilian representatives, the former, because of Morocco, was out to placate French feeling, while the latter pleaded cultural affinities with the 'Latin' sister-nations. Hence the League 'Four' are all inclined to the French side. It was inevitable." The Spanish and Brazilian members of the Committee represented their governments as Ambassadors to France. See p. 39.

[13] Bourgeois: *L'oeuvre de la Société des Nations;* p. 262.

It will be observed that the Committee of Four did not acquire any first-hand information concerning the territory they proposed to divide, nor did they examine on the spot the practical effect of any proposed line of demarkation; also their original inquiries were confined to a hand-picked group of witnesses.

It was during these academic inquiries that a plan was devised for *dividing* the territory according to a mathematical hypothesis and *uniting* it again by a political convention. The Council included both in its recommendations to the Supreme Council.[14]

THE HYPOTHESIS

In deciding that the territory should be divided by a mathematical formula, the Four used the general vote as a basis. They considered several hypotheses and adopted finally the one described by M. Bourgeois:[15]

"The simplest was to attribute respectively to Poland and to Germany a number of votes equal—or as nearly as possibly so—to the number of votes in their favor, and at the same time try to reduce as far as possible the minorities left on each side outside of the country they had pronounced themselves for. The inconvenience of this system was that the notion of proportion was excluded; for losses that were equal in numbers, would be in proportion much greater for the country that had received less votes in the plebiscite." [16]

[14] Reports upon the methods of solving the Upper Silesian questions are meagre almost to barrenness. Little more than the letters of transmittal concerning the dispute and the recommendations of the Council and their acceptance by the Supreme Council appear in the Official Journals of the League. The Secretary-General's report of the Third Assembly contains no summary of the data examined nor of the information given by persons interviewed, and there is no reference to the method used by the Council in arriving at its recommendations. Close secrecy has been maintained, disturbed in any authentic manner only by M. Bourgeois' book on the work of the League of Nations: *L'oeuvre de la Société des Nations.*

[15] Bourgeois: *L'oeuvre de la Société des Nations;* pp. 259-260.

[16] To illustrate: A town like South Bethlehem,—of which there are many in the United States—comprises a steel plant with outlying industries, an attractive residence district and some agricultural land. Let us say it comprises 25 wards. It holds an election and casts 100,000 votes. Of these, 55,000 are Republican and 45,000 are Democratic. There are 15 wards in the steel plant district, and of these, 9 vote Republican and 6 Democratic. In the residential and agricultural districts, 6 of the 10 wards vote Democratic and 4 Republican. Normally there would be one administration on a majority vote, namely, Republican. But these two parties have agreed to govern their section of the district separately in accordance with the vote. The Democratic group, however, have behind them the influence of a mounted police, and they decide that the 55,000 Republican votes shall be distributed over the agricultural and residential area, leaving them but 4 out of 9 wards in the industrial section. But, in order to give respectability to the transaction, in which the Republican group is not invited to participate, they

The adoption of this hypothesis by the Council resulted in the recommendation of a line of demarkation which would give about 1300 square miles, or 31 per cent. of the area, together with 47 per cent. of the population, to Poland; and 2800 square miles, with 53 per cent. of the population, to Germany.[17] Of the 2,060,000 inhabitants, the 900,000 allotted to Poland were largely concentrated in the industrial triangle; while those allotted to Germany were distributed over an industrial and agricultural area.

But the allocation of the rich resources of the industrial area was the really vital matter and in this area the hypothesis increased the proportion of Polish votes. The line of demarkation thus proposed would give the greater part of the triangle, containing most of the Prussian State mines, to Poland.[18] This proposed allotment included three-fourths of the total current output of coal, amounting, in 1913, to 43,170,000 tons. Poland would, therefore, receive as its share approximately 32,500,000 tons yearly. But of the coal reserves not yet workable, Poland would receive nine-tenths; thus its share would increase in volume with future development. Of the then active sixty-three mines, fifty, employing about 130,000 men, would be allotted to Poland. But equally important was the proposed allocation of the iron industries. Nearly 90 per cent of the iron ore mines were in territory to be given to Poland. Of the thirty-six blast furnaces, Poland would receive twenty-two; of the eight principal iron and steel works, Poland would receive five; and of the fifteen smelting plants, nine. The entire output of zinc and all of its works would be given to Poland; these mines

engage a public-spirited organization to suggest an exchange by which the Democratic group will give to the Republican group 5 wards in the section containing forests and farms and a few industries for 5 of their wards in the industrial area. The people, having voted to the contrary, have nothing to say to this reversal of their vote, for the Democratic political bosses possess the power. By this process the Democrats gain control of the industrial section. They find, however, in laying down the line, that important accessories of the steel industry, its water supply, working men's homes and the life of the town generally are divided; so they get together under the threat of the mounted police and work out a convention by which steel can be produced under a contract entered into by the two rival parties.

[17] *U. S. Commerce Reports,* 1921, No. 13; p. 797.

[18] Of the 15.5 milliard cubic meters of coal owned by the Prussian State, Poland received 12.2 milliard. The Prussian State mines were as follows; Four coal mines, namely, the König mines at Königshütte, with four shafts, producing 8,000 tons daily; the Königin Luise mines at Zaborze, with two shafts; the Bielschowitz mines, with three shafts; the Knurow mines, with two shafts; and an iron-ore mine at Gleiwitz. The division allotted the whole of the König and of the Knurow mines and one shaft of the Bielschowitz mines to Poland; that is seven out of a total of eleven shafts.

and works produced one-sixth of the entire world output and equalled three-fifths of the output in the United States. The lead resources would be allotted to Poland, amounting before the war in value to $3,500,000 per year.[19]

The above recommendations were embodied in a report of the Council, forwarded to the Supreme Council on October 12th, 1921, and accepted without material modification by the Supreme Council.

THE EFFECTS OF THE APPLIED HYPOTHESIS

The following illustrate the application of this hypothesis to the population and to the economic conditions of the plebiscite district: [20]

In Königshütte, Germany received 31,864 votes and Poland 10,764, but it was allotted to Poland. The richest of the Prussian State coal mines is located here, together with important iron and steel works. Three-fourths of the people voted for native rule and received alien rule because the mines were coveted by France and Poland. In Bismarkhütte, 8,340 persons voted for Germany and 4,654 for Poland. It also was placed under Polish rule; the iron and steel works in this city being the prize. In Tarnowitz, 7,451 persons voted for Germany and 1,297 for Poland; they were placed under Polish rule, in order that the entire zinc deposit might be given to Poland. In Chorzow, 3,242 voted for Germany and 2,980 for Poland; this commune also was allotted to Poland, in order to give Poland an electrical plant, thereby cutting in two the entire system, the connecting plant being at Zaborze in Germany. In Kattowitz, 22,774 persons voted for Germany and 3,900 for Poland. This is the railway center of the district, containing the zinc works and rolling mills; and was given to Poland in order to supplement the zinc output of Tarnowitz.

Other industrial communes which had a Polish majority, as, for instance, Miechowitz (Poland, 4,472, and Germany, 1,685); Rossberg (Poland, 6,083, and Germany, 4,919); Rokittnitz (Poland, 1,424, and Germany, 334); Sosnitza (Poland, 1,563, and Germany, 1,058), and Mikultschütz (Poland, 5,961, and Germany, 2,059), were given to Germany. These communes are smaller and of much less importance than the above enumerated examples, and were situated between Beuthen and Hindenburg in such a manner that without these two cities they could not be allotted to Poland; but in Beuthen itself the vote was 29,890 for Germany and 10,101 for Poland. As the mines in

[19] *U. S. Commerce Report*, 1921, No. 13; pp. 797-798.
[20] Results of vote from the *Journal Official de Haute-Silésie*, March 7th, 1921.

this district were not the possessions of the Prussian State, but were owned by private organizations, Poland and France had little interest in the city and it was given to Germany. There were, however, nineteen surrounding communes where mines and industries were located; of these four voted for Germany and fifteen for Poland; but of the four which gave a majority German vote, three were given to Poland and of the fifteen having a majority Polish vote, five were allotted to Germany.[21]

The attempt to divide an industrial unit created operating difficulties, of which the Delbrück and Guido shafts of the Bielschowitz mines offer examples: At the Delbrück shaft, located near Hindenburg, the boundary line runs between the shafts and the coal fields, leaving the shafts to Germany and the larger part of the coal fields to Poland. A cement wall was immediately erected 300 feet below ground at the point where the boundary line intersected the vein of coal. By this process it is estimated that 60,000,000 tons of coal have been rendered useless until the Polish Government erects a shaft. The ill will existing between the governments of Poland and Germany will not permit them to co-operate in putting out some fires in this same vein which were in progress at the time the wall was built. It is not known whether they have died out or are consuming vast areas of coal.

In the Guido shaft, the intake for the airshaft which supplies the mine is located in Germany, while the exhaust shaft is left in Poland. Either country can render the mine useless by closing either shaft. At this mine, the sand supply which is necessary to fill the corridors when coal is removed is located in Poland, as is also the water supply used for the engines. A temporary understanding for the use of such sand and water has been reached between the two countries, but in the event of a disagreement, the withdrawal of these necessities to mining would close the mines. At the Delbrück mines, the railway lines used for the transport of wood and coal to the works were severed by the new frontier within a few feet of the entrance to the yards of the works, necessitating the laying of new tracks in the section belonging to Germany. This section of the frontier line was drawn to satisfy the desire of Poland to retain the company's houses, built for the workmen who were employed in the Delbrück works in Germany. The division necessitates that working men cross the frontier twice each day with

[21] The four communes which voted for Germany were Bismarkhütte (iron and steel works), Neu-Heiduk and Schwientochlowitz (in the immediate vicinity of Königshütte) and Bobrek. This last was given to Germany.

passports, where each time they must submit to the humiliation of being searched by the officers of both governments.[22]

There are other frontier anomalies which are inexplicable by the mathematical hypothesis. The main road between Hindenburg and Beuthen, with the trolley line connecting these two towns, is intersected in such a manner that within a stretch of less than half a mile the traveler is forced to cross the German-Polish frontier twice, thus necessitating two visés. The reason for this digression in the frontier appears to be that the recommendation of the League Council was intended to include the German military hospital at Ruda, within Polish territory, as demanded by Poland.

Seventy-five per cent of the coal fields of the Radzionkau mines have been left to Germany and 25 per cent given to Poland; but the shafts were allotted with the 25 per cent, and Germany must build new shafts. The iron ore mines of Fiedlersglück, near Beuthen, were left to Germany, but the works for washing and preparing the ore were given to Poland. Special conventions were necessary for permits to take the raw material from Germany to its preparation plant in Poland and then to transport the prepared material back into Germany.

The source of the water supply for Beuthen was allotted to Poland, but Beuthen was given to Germany. Under the present arrangement, the water supply runs from the source in Polish territory to Beuthen and to certain surrounding communities in Germany; and from there back into Poland, supplying the local communities left to Poland. The treaty later concluded between Poland and Germany makes elaborate provisions to keep this supply running in both countries, severed as is the system by boundary lines where it enters Germany and where it returns to Poland. At the end of fifteen years, or before, if Beuthen does not need the supply, Poland has the privilege of buying the installation, and should Poland not purchase it, Germany may destroy the connections within its territory.

The Oberschlesische Elektrizitätswerke Company has two connecting electric power plants. One is in Chorzow, given to Poland; the other

[22] On February 3, 1923, the Secretary-General submitted to the Council a request from the Conference of Ambassadors to appoint an expert on coal-mining as adviser to the Delimitation Commission in Upper Silesia in which he stated: "The request for the appointment of this expert has been made with a view to the allocation of the Delbrück coal mines, in regard to which mines the Commission has not been able to give effect to the agreement concerning the fixing of the frontier in Upper Silesia." *(Official Journal,* March, 1923; p. 400.) The result of the work of this expert is not recorded, and the status of the frontier in August, 1923, was as described above.

is in Zaborze, given to Germany. Agreements have been concluded, permitting the cables and the electric power to pass from one territory to another, and providing protection for the workmen forced to cross and recross boundaries in their work of supervision and repair.

From these illustrations, it is apparent that the economic conditions were taken into consideration, not to preserve economic unity and not as a corrective to the vote, but to award to Poland the main economic resources of Upper Silesia. It appears further, whenever there was a division of the resources, the part given to Germany could not be used to advantage without necessitating considerable outlay to put it into working order.

THE POLITICAL CONVENTION

But whatever motives may have governed the Council in the selection and application of its hypothesis and in its disregard of economic conditions, it seems to have possessed the sanguine belief that a territory thus divided could be made economically whole again by the simple device of a political agreement, entered into by the two countries concerned. It will be recalled that the Council was requested to recommend only a line of demarkation, but in addition it undertook also the responsibility of suggesting a new form of government to be applied to the divided territory, anticipating that its line of demarkation would create economic chaos were no such remedy to be provided. In other words, factories, markets and raw materials, mills and their accessories, rivers and their sources, industrial plants, towns, houses and workshops, educational and social systems, railways and communications were to be severed by a boundary line, and reunited by a political convention.

The plan was embodied in a recommendation made by the Council on October 28th, 1921, to the Supreme Council. It consisted of a proposed line of demarkation and of a political convention, the latter having for its object (1) the preservation of industries separated from their former markets; (2) to insure the supply of raw materials and manufactured articles indispensable to the industry; (3) to avoid economic disturbances due to change in currency; (4) to continue the operation of railways over cut frontiers; (5) to regulate water and electrical supplies; (6) to facilitate freedom of movement of individuals over the frontiers; (7) to guarantee respect for private property; and (8) to assure to workmen who found themselves in Poland the benefits of the German social insurance scheme and trade unions. As part of such a convention the Council proposed a Mixed Commission

of which it would appoint the President; and an Arbitral Tribunal to settle any private disputes which might result from the application of temporary measures.[23]

The Supreme Council accepted these recommendations; and the Secretariat prepared the rules of procedure[24] for a convention, providing for the necessary sub-committees to deal with the questions of railways, water and electric power system; with the disjointed monetary, postal and telephonic services; with the customs regime and the products of mines; with employers' and workers' federations and social insurance; and to provide for the free movement of peoples between the Polish and German zones and the protection of minorities.[25]

The Council of the League appointed M. Calonder, former president of the Swiss Confederation, to preside over the Conference which was convened in Geneva on November 23rd, 1921. The Conference appointed various sub-commissions to sit in Kattowitz, Beuthen and at Oppeln.[26] These commissions began work on December 9th, 1921, and on May 15th, 1922, they presented to the world what has sometimes been described as the longest treaty in history. In this document 105 articles were inserted to piece together the railways; and three directorates were installed—one directorate in common, one directorate for Poland and another for Germany, to keep the trains running over the frequently intersected boundaries; sixty-one articles were required to establish a railway personnel; thirty-four articles were required to guarantee a water supply from Poland to Germany and back again; forty-three articles were required to regulate duties and tariffs; forty-seven articles provided for permits of circulation in order that people might travel from their homes to shops and to work; twenty-four articles were drafted to keep the monetary system in operation; fifteen articles regulated posts and telegraphs; ninety-five articles provided for the minorities left in each zone; thirty-nine articles dealt with questions affecting domicile and nationality; nineteen articles were inserted to apply to questions of expropriations; forty-five articles established the administrative and arbitral tribunals; and finally an

[23] For text of recommendation, which is identical with the decision of the Supreme Council, except for immaterial corrections, see *Minutes of the Extraordinary Session of the Council*, 1921; pp. 16-24.

[24] *Official Journal*, January, 1922; p. 53.

[25] For procedure of minority petitions from Upper Silesia see Chap. III; p. 81.

[26] It is not without interest to note that for the purposes of *dividing* Upper Silesia no commissions were delegated to sit in Upper Silesia or to examine conditions on the spot; but to reunite Upper Silesia into a functioning body such a procedure was followed.

annex of twenty-five articles was added, to include after-thoughts and to set at rest the mutual distrust not explicitly covered in the 606 articles of the Treaty.[27]

This Treaty is to remain in force for fifteen years. At the expiration of the time set it may be changed, abrogated or renewed. It is the hope of the Council that at the end of the period the articles will have been interpreted, the Germans and Poles will have accepted the situation, and will have acquired an international spirit. But the Upper Silesian coal fields are a prize worth the struggle, and the impression received by the visitor to that territory is that its organized life is artificial and that the present peace is but an armistice.

THE LEAGUE AS A BENEFICIARY

In the Polish-German Convention, drawn under the auspices of the Council in accordance with its recommendation to the Supreme Council, there were reserved to the Council the following rights:[28] Article 3 provided that any differences concerning industries, their capital, nationality of their personnel and similar questions arising between the contracting parties during a period of fifteen years, may be taken by the government of either party to the Council, both parties agreeing in advance to accept its decision. Article 564 authorized the Council to appoint the President of the Mixed Commission and the President of the Arbitral Tribunal, upon request of the two governments. Articles 64-158 provided for the application of the Minority Treaty to both the German and Polish sections and for a special procedure within Upper Silesian territory for dealing with such complaints.

POSITION OF THE ASSEMBLY

The record of the settlement of this dispute would be incomplete without a reference to the Assembly, which was in session at Geneva during the greater part of the time the Council had this matter under discussion. Upon the occasion of one of its sessions, Viscount Cecil said:[29]

"As to the merits of that dispute, I shall, naturally, say not a single word; I only mention it in order to make this observation. I venture,

[27] Students of government will be amply repaid by a visit to Upper Silesia to study the form of government established by this Convention—especially with reference to the manner of its enforcement in relation to local authorities and laws. The writer regrets that the administration of Upper Silesia is not a germane part of this discussion, which concerns primarily the settlement of disputes.

[28] Chap. III; p. 63.

[29] *Records of the Second Assembly;* p. 63.

respectfully, to express the hope, not only that the Council will take care to arrive at a just decision in the matter—that is obvious and need not be emphasized—but also that they will take care that that decision is not only just in itself, but is arrived at with such guarantees of justice as will guarantee its justice to the whole opinion of the world. It is not enough in this matter to be just; you must also appear to be just as well."

M. Bourgeois contributed the following to the discussion:[30]

"I do not think that the League of Nations could wish for a more striking proof of the degree of moral authority it has acquired than that given by the reference to it of the problem of Upper Silesia, the solution of which had been vainly sought by the greatest nations of Europe and Asia."

The representative from India, however, sought greater recognition for the Assembly than moral authority when he said:[31]

"I know that it is the Council, and not the Assembly, which is charged with the great task of settling this problem. Nevertheless, the Assembly has a mighty role to perform in this matter. Whether in this matter of Upper Silesia, or any other great tasks between Powers, the Council has a very delicate and a very onerous responsibility resting on its shoulders. They may do their work with the utmost impartiality, with the most conspicuous ability, with the most unwearied industry; nevertheless, for the results of their work to be acceptable, for their judgments to be taken by the Great Powers concerned, it is necessary that the sympathy and support of the Assembly should be constantly in attendance on the work of the Council at every stage. The Assembly cannot afford to efface itself in this matter."

Aside from such general references, the Second Assembly at no time was taken into the confidence of the Council, and at no time did it exercise either discrimination or responsibility in this important matter. But when the Third Assembly met, in 1922, it was called upon to share in the criticism leveled against the "League" because of the recommendations of the Council. The Assembly, however, was given but a vague report,[32] containing no explanation of the basis of settlement, and Viscount Cecil replied to the implied criticism as follows:[33]

"I am not going into the merits of the actual settlement of that question; I know it has been criticized, but I think those who criticize it have failed to distinguish between the Provisions of the Treaty which the Council of the League was called upon to interpret, and the action of the Council itself. But what I do want to remind the Assembly of was the

[30] *Records of the Second Assembly;* p. 202. [31] *Ibid.;* p. 213.
[32] Report of the Secretary-General to the Third Assembly, *Records of the Third Assembly,* Vol. II; p. 28. [33] *Ibid.,* Vol. I; p. 43.

admirable work that was done in working out that settlement by a Conference, attended by the representatives of both Poland and Germany."

THE PREVENTION OF WAR

It has been asserted that the Council prevented a war by the settlement of the Upper Silesian dispute. It has not been made clear between what states war was imminent. Not between Poland and Germany, for the latter was disarmed and Allied troops were in the territory. It would, perhaps, be more accurate to say that the Allied Powers broke their own deadlock by referring the question to the Council, for it is nowhere claimed that France and Great Britain would have resorted to war over Upper Silesia. That this decision of the Council restored amity between the two governments may be doubted, as appears from the following statement, made nearly two years later, by Mr. Lloyd George:[34]

"Its [the League's] award has been acted upon, but hardly accepted by both parties as a fair settlement. That is due to the manner adopted in reaching the judgment. Instead of following the Aaland precedent in the choice of a tribunal, it pursued a course which engendered suspicion of its motives. It created the regrettable impression of anxiety to retain a certain measure of control over the decision. There was suspicion of intrigue in the choice of tribunal and conduct of the proceedings. . . . In Silesia two powers of great authority in the League—France and Poland—were passionately engaged in securing a result adverse to Germany. . . . In these circumstances the League ought to have exercised the most scrupulous care to avoid any shadow of doubt as to its freedom of all bias. Had it chosen distinguished jurists outside its own body to try the cause, as it did in the Aaland case, all would have been well. It preferred, however, to retain the matter in its own hands. Hence doubts and misgivings with which the judgment of the League has been received, not only by the whole of Germany but by many outside of Germany."

THE HYPOTHESIS AND WORLD PEACE

The settlement of the Upper Silesian dispute is more than the division of territory and the establishment of a truce for fifteen years. It contains implications and raises questions concerning justice and the maintenance of peace, which extend far beyond Upper Silesian borders and which are graver than the allocation of mines and the dissection of industrial units. These questions extend to the moral foundations of the League and to the integrity of peace settlements.

The first question which arises is whether the Council upheld the integrity of the Treaty provisions. It will be recalled that the Treaty

[34] Article in *New York American,* April 8th, 1923.

provided that the vote should be determined by communes according to a majority in each and that regard was to be paid to the wishes of the inhabitants as shown by this vote, and to the economic and geographical conditions. It is apparent from the illustrations given that the Council did not regard the wishes of the majority of the inhabitants over all Upper Silesia or over the Triangle; and that it did not regard the wishes of the inhabitants as shown by the communal vote, going so far as to place under alien rule people who had voted five times as many for native rule.. The hypothesis followed neither totals nor communes, but represented a theory of proportional division which was sufficiently flexible to unite mines and industries when it was to the interest of Poland to do so, or to divide them when such were the Polish interests.

It is apparent that under either the vote by communes or the hypothesis, some division of the economic unity of the territory had to take place; but it is evident from the foregoing illustrations that the maintenance of economic unity was secondary to the desire to favor Poland in the distribution of the resources. Thus, in a territory where 705,000 persons voted in favor of Germany and 480,000 were in favor of Poland, three-quarters of the coal, five-sixths of the active mines, 90 per cent of the iron ore, two-thirds of the blast furnaces, and the entire output of lead and zinc were allotted with the minority vote, while the agricultural area was given to the majority vote. As Upper Silesia is an industrial, and not an agricultural district, the discrimination is obvious. This discrimination was accomplished, not by taking into consideration economic and geographical conditions, but by throwing a larger proportion of the total German vote into the agricultural district, increasing the area for Germany, while concentrating the Polish vote in the industrial district, increasing its hold over coal and iron and industrial plants.

The Council, however, appears to have relied upon two precedents for its justification in dividing the territory by a mathematical rule and uniting it by a political contrivance. It pointed out in its recommendation that the Treaty provided for certain analogous cases where its framers had foreseen that the injustices in territorial divisions would create human and economic disaster. It may be noted that in these analogous instances the Treaty makes specific provision for such conventions, as in the matter of Danzig, and they were, therefore, part of the signed agreement; also that the advocates of peace had hoped that the League would find a new path to peace and justice rather than a reliance upon the precedents set by the old diplomacy of which it was to form no part.

A second precedent which seemed to justify the Council in its division of Upper Silesia is described by M. Bourgeois:[35]

"The members of the Council had the good fortune to be able to benefit by experience acquired in an analogous case. M. Benes, Minister of the Foreign Affairs of Czecho-Slovakia, and present at Geneva, representing his country at the Assembly, at the time when the Council was studying the question of Upper Silesia, and particularly of the industrial section, could explain the case of Teschen, where, under conditions even more difficult than in the industrial section, it had been possible to cut the town of Teschen itself (the frontier crossing the center of the town), to satisfy the national feelings in such a manner that, thanks to economic provisions, this political cut did not harm the industrial development of the regions thus separated." [36]

The analogy with Teschen fails in the following respects: (1) The town of Teschen which, it is alleged, was so successfully divided, is not an industrial community; (2) it has a river which forms a natural boundary line; (3) the political cut did not harm the industrial development because the industries lie outside the town of Teschen, and in the Duchy of Teschen, and they were given to Czechoslovakia *upon its insistence that a political agreement could not possibly preserve their unity and efficiency;* (4) no plebiscite could be held in Teschen, and to "satisfy national feeling" the Supreme Council was forced to make an arbitrary settlement; while in Upper Silesia a plebiscite was held. Therefore, the representative of the country (Czechoslokavia) which received the industries, could well say that the industrial development was not retarded by the division of territory in which the industries were not located.

The apparent disregard of the precise terms of the Treaty of Versailles; the willingness to follow in the path of the Supreme Council; and the liberties taken with election returns do not convey to a disinterested public the assurances that Treaty provisions will be strictly inviolate when interpreted by the Council.

THE INTEGRITY OF THE COVENANT

The Upper Silesian dispute was the first question referred to the Council by a bloc of its member states. It involved the interests of Poland, a member, and of Germany, a non-member, and was submitted under Article 11, which provides that matters considered under it are the concern of the whole League and the *League* shall take any action that may be deemed wise or effectual.

[35] Bourgeois: *L'oeuvre de la Société des Nations;* p. 264.

[36] For contrary statement on Czechoslovakia in the case of Teschen see Chap. XVIII; p. 344.

Apparently the acting President of the Council had some misgivings as to the extent of the authority of the Council to give an advisory opinion under these circumstances, for he said:[37]

"Article 11 does not clearly lay down what should be the action of the Council in such a case. The letter which I have received is, however, very clear on this point; you are asked for a recommendation 'as to the line which the Principal Allied and Associated Powers should lay down.' The right of the Council of the League of Nations to make a recommendation when requested by one or several of its Members is not explicitly laid down in Article 11 of the Covenant, but is implied, I may say, by the whole Covenant. On the other hand, Articles 87 and 88 of the Treaty of Versailles formally attribute to the Allied and Associated Powers the right to take a final decision with regard to the frontier between Germany and Poland in Upper Silesia. . . .

"The position of the Council is clearly defined by these provisions. The Powers represented on the Supreme Council have requested the Council of the League to make any recommendation which it is entitled to make and to transmit to those Powers which alone, according to the Treaty, can take the final decision."

From the arbitrary methods adopted by the Council and from the exclusion of the Assembly, this dispute and its settlement seem not to have been the concern of the League, for there is probably no settlement of a dispute about which its members know less; nor was any wise and effective action taken by the *League*. This provision was interpreted by the Council to mean itself;[38] and although the decision was rendered in the name of the League, that body whose concern is the peace involved in Upper Silesia had no voice whatever in the manner of its settlement.

Article 4 of the Covenant provides that whenever the Council is considering any matter affecting the special interest of a state it *shall* be invited to send a representative to sit as a member of the Council. In this instance, the special interests of Poland were deeply affected, but the Council, instead of following the procedure laid down, followed the Supreme Council in dealing with the dispute which it had referred.

Article 17 is not without interest. It provides that whenever a dispute arises between a member and non-member state, the latter shall be invited to accept the obligations of the Covenant. The Supreme

[37] *Minutes of the Extraordinary Session of the Council,* 1921; pp. 7-8.

[38] Contrast the method of settling the Upper Silesian dispute with that of Memel, where the Allied Powers also were parties and where the question was one of interpretation of the Treaty, but wherein publicity and observance of the provisions of the Covenant appear to have been respected. (Chap. XII; p. 277.)

Council took the position that in the dispute between Great Britain and France, Germany was not a party and need not be consulted; and although it was a signatory to the Treaty, and its former nationals voted in the plebiscite, it need have no voice in the settlement. The Council, although it represents a new morality and a wider righteousness and vision, accepted the precedent established by the old diplomacy and Article 17 was not only not applied, but a hearing was denied to representatives of Germany.[39]

These practices suggest the question whether in accepting a dispute for settlement, referred by the Principal Allied Powers which possess certain rights under the Treaty and which Powers are bound by no constitution as to procedure, the Council may disregard its own constitution and act under the broader powers of the Allied Powers as represented in the Conference of Ambassadors? If this is true, will states be assured of any guarantees concerning the method of dealing with their disputes, in the event that the Conference of Ambassadors refers the question to the Council?

THE COUNCIL AS AN ARBITRATOR

In the Upper Silesian settlement, there arose for the first time the question whether the Council is bound by the precise question submitted to it or whether it may extend its jurisdiction. In this dispute, the Council was requested to recommend a line which the Allied Powers should lay down. The Council not only recommended a line as requested, but devised a temporary system of government to regulate Upper Silesia for a period of fifteen years. It justified this action on the ground that there were analogous cases in the Treaty. But nowhere was any provision made in any treaty for drafting a convention (longer than the Versailles Treaty) and for the form of government set up under the auspices of the League. States have hitherto endorsed the principle of arbitration rather than of judicial decision, because among other advantages it enables them to agree upon the precise question.[40] If, however, the Council is permitted to extend its jurisdiction beyond the question submitted and to experiment with new forms

[39] Chap. I; p. 27, for the other instances of failure to apply Article 17.

[40] The precedent established in the Upper Silesian controversy in 1921 was repeated in the Vilna affair of 1922 when the Council again went beyond the question submitted by the states in recommending a demarkation line. The question of whether the Council may make recommendations upon matters which are not submitted has been deferred to the Fifth Assembly, and Lithuania has requested that it be submitted to the Permanent Court for an opinion—a request thus far denied by the Council. (Chap. XXXIII.)

of government and make other innovations in addition to deciding the merits of the particular question submitted, then the principle of arbitration is likely to fall under suspicion if not into disrepute.

It is also a principle of arbitration that no arbitrator in a dispute shall become a beneficiary under its own decision. Were it otherwise, the integrity of the decision would be immediately under suspicion, if not attack. The Council, however, has followed a different practice, and in the disputes where it has proposed a settlement, it has used the opportunities to extend its own authority either in the reservation of powers or in the right to make appointments. These additions to its authority constitute the League a beneficiary under its own decisions and make states reluctant to submit disputes for fear that the Council will be used by the dominating powers within it, to extend their administration into the domestic affairs of the disputants, through encroachments by the Council.

This practice began with the Aaland Islands question, when the Council undertook to guarantee certain clauses in local Finnish legislation relating to domestic affairs and when the League accepted responsibility for safeguarding the neutrality of the Islands.[41] It occurred again in the Upper Silesian dispute when the Council recommended that it be given the appointment of the heads of the Mixed Upper Silesian Commission and the Arbitral Tribunal. It occurred also when the Council reserved to itself certain rights under the Danzig constitution negotiated by the High Commissioner appointed by the League;[42] and it occurred finally in the Memel Controversy, wherein the Chairman of the Commission for Communication and Transit of the League is to name a representative on the Harbor Board.[43]

While it may be said that the motive of the League is the high moral one of keeping the peace, states which regard their sovereignty with jealous care will not entirely divorce this ideal from the policies of the foreign offices of the Principal Allied Powers which dictate the policy of the Council and in submitting disputes such states will guide their own course with political circumspection.

COMMENTARY

The Council, freed apparently from restrictions of Treaty provisions, and from the human equations which so troubled Great Britain that it would not agree to dividing the Triangle; and unfettered by Covenant provisions, has established a temporary peace in Upper

[41] Chapter XIII; p. 293. [42] Chapter VI; p. 139. [43] Chapter XII; p. 279.

Silesia and contributed a unique form of government. The foundations, however, upon which peace rests have been somewhat unsettled and may remain so until states receive more definite assurance regarding the following questions raised by the dispute:

Is the Council, in the settlement of a dispute bound at all times, regardless of its source or conditions, to apply the procedure laid down in the Covenant, with especial reference to Articles 4, 11 and 17, or may it exercise discretion or adopt the procedure which governs the body that has referred the dispute?

Is the Council, in making a recommendation, to confine the terms of that recommendation to the precise question which the parties submit, or may it extend its jurisdiction beyond the original question?[44]

Is the practice of the Council, in constituting itself a beneficiary, under its own decisions, consistent with the rules governing arbitral and judicial tribunals; and is this practice likely to increase public confidence in the disinterestedness of these decisions?

Is the policy of excluding the Assembly and thus forty-four member states from all participation in or intimate knowledge of the method of settling an important dispute, while the decision is rendered in the name of the whole League, calculated to advance the belief that any voice is to be given to small or neutral states in the settlement of disputes?

[44] Chapter XXVIII. For strict accountability with which the Permanent Court observes the limits of the questions submitted.

CHAPTER VIII

THE ALBANIAN QUESTION

Albania is a long, narrow, mountainous territory on the western coast of the Balkan peninsula, bordering on Yugo-Slavia on the north and east and Greece on the south. The people are of an ancient race, but have, in historical times, almost continuously been under foreign domination—Roman, Byzantine, Slav and finally Turkish. With the beginning of the eviction of the Turks from the Balkan peninsula, in the nineteenth century, national feeling in Albania awakened, leading the people to claim an independent country. The population is estimated at about 1,500,000, chiefly Albanian, and of mixed religion (Mohammedan, Roman Catholic and Orthodox Greek). The country appears to have rich, unexploited natural resources (oil, bitumen, coal, iron and copper). The coast line is strategically important, for its ports, Durazzo on the Adriatic Sea, Santi Quaranta on the Ionian Sea, and chiefly Valona commanding the entrance to the Adriatic.

Upon this little country, one of the smallest in its membership, rests, to a considerable extent, the prestige which the League has acquired in the settlement of controversies. For it is frequently mentioned as one of the three instances where the League averted war. Therefore, as a corner-stone of the League's competence in this field, it is accorded an examination somewhat out of proportion to its importance as a controversy.

A precise understanding of the Albanian Question depends upon a knowledge of events in its history during the war; otherwise the relation between League and Conference and the bearing of the controversy upon the Italo-Greek dispute may appear to be without point.[1]

THE HISTORY OF THE DISPUTE

As a result of the Balkan war of 1912, the Great Powers agreed that Albania should be recognized as an independent state. In May, 1913, the Treaty of London was drawn up which defined the boundaries of the new state. Their delimitation was rather vague, for it left a large tract of territory to be divided beween Serbia and Montenegro as the fruits of victory; and to Germany, Austria-Hungary, Italy and Great Britain was entrusted the "care of regulating the delimitation of the

[1] Chap. IX; p. 198.

boundaries of Albania and all other questions concerning Albania."[2] Their mission was largely the technical task of marking on the spot the frontiers agreed upon in the Treaty. But certain territory on the north, which eventually became the subject of the dispute, in the neighborhood of Prizrend and Dibra, was not actually delimited, although the cities were given to Serbia; neither was the boundary on the south satisfactory to Greece, which desired Argyrocastro and Koritza.

This treaty came into effect on July 29th, 1913, under what was then the Council of Ambassadors. The following form of government was proposed: a foreign prince chosen by the Great Powers; an international commission of control; and a *gendarmerie* supplied by a neutral power.[3] A German prince was made ruler and given an international credit of £3,000,000. His power never extended beyond the town in which he lived and in September, 1914, he left Durazzo and enlisted in the Germany army. The scheme for a commission of control and *gendarmerie* did not materialize. In 1918, Lord Balfour announced that the Treaty of London, to which Albania was not a party, had ceased to have binding force, as all the signatory Powers were then engaged in war, but as regards the future, Great Britain "would be glad to see the principle of nationality applied as far as possible to this . . . question, which will have to be settled by the Peace Conference."[4] During the war, Albania became a battleground for contending forces. Italy, though still a neutral, took possession of the island of Sasseno in the port of Valona, commanding the entrance to the Adriatic; while the Austro-Hungarians occupied north and central Albania.

The political history of Albania during the war appears to have been highly dramatic. In 1915, a secret treaty was entered into by Italy, Russia, Great Britain and France, in which they agreed to partition Albania as follows:[5]

"Article 6. 'Italy shall receive full sovereignty over Valona, the island of Sasseno and surrounding territory of sufficient extent to assure defence of these points. . . .'

"Article 7. 'Should Italy obtain the Trentino and Istria in accordance with the provisions of Article 4, together with Dalmatia and the Adriatic islands within the limits specified in Article 5, and the Bay of Valona

[2] *A History of the Peace Conference of Paris,* Vol. IV; p. 338.

[3] Americans will doubtless regard this arrangement as an odd kind of independence, but such was the interpretation of the word by the Principal Allied Powers at that time.

[4] *A History of the Peace Conference of Paris,* Vol. IV; p. 340. [5] *Ibid.*

(Article 6), and if the central portion of Albania is reserved for the establishment of a small autonomous neutralized State, Italy shall not oppose the division of Northern and Southern Albania between Montenegro, Serbia and Greece, should France, Great Britain and Russia so desire. The coast from the southern boundary of the Italian territory of Valona (see Article 6) up to Cape Stylos shall be neutralized.

" 'Italy shall be charged with the representation of the State of Albania in its relations with foreign Powers.

" 'Italy agrees, moreover, to leave sufficient territory in any event to the east of Albania to ensure the existence of a frontier line between Greece and Serbia to the west of Lake Ochrida.' "

This agreement, in effect, provided that the autonomous neutralized state would be under Italian control, as Italy was charged with its diplomatic representation, while the remainder would be partitioned. In June, 1917, Italy proclaimed the independence of Albania under an Italian protectorate; whereupon the French proclaimed a republic of Koritza which was to be "independent of independent Albania." This independent republic was abolished at the end of three months and Italy explained that by "protectorate" was meant "protection." [6]

At the close of the war, Serb troops occupied Scutari; but were replaced by an Inter-Allied force, commanded by a French general. Early in 1919, Serb troops advanced beyond the 1913 boundary into Albania and occupied a line along the northern frontier. In March, 1920, the Inter-Allied forces withdrew and French control ceased. The Serbs immediately made further invasions into Albanian territory.

Albania presented its claims at the Peace Conference, insisting that the Treaty of London was still in force. The three Powers—Italy, France and Great Britain—agreed that (1) Italy should have full sovereignty over Valona; this would give to Italy full control of the entrance to the Adriatic; (2) Italy was to have a mandate over Albania, under the League of Nations; (3) the northern boundaries of Albania were to be readjusted in favor of Yugo-Slavia and an autonomous province was to be formed; (4) Argyrocastro and Koritza, in the south, were to go to Greece.[7] This proposal was opposed by Mr. Wilson, and upon the failure of the four Powers to agree, it was decided to revert to the terms of the Treaty of London.

Italy settled its differences with Albania in August, 1920, by an agreement in accordance with this Treaty, and evacuated Valona, but retained the Island of Sasseno, which dominates the harbor. The northern and eastern borders remained a subject of conflict between

[6] *A History of the Peace Conference of Paris,* Vol. IV; p. 341.
[7] *Ibid.;* pp. 343-344.

the Albanians and the Serbs, who continued fighting. The southern boundary remained unsatisfactory to Greece.

In December, 1920, Albania was admitted to membership in the League of Nations with its boundary lines still in doubt.[8] It then brought its troubles to the League. These comprised two disputes: One was between Albania and the Serb-Croat-Slovene state over the northern boundary of Albania; the other was between Albania and Greece over the southern boundary. The complaint made by Albania included both questions; and although the League Council disposed of them in one resolution, for purposes of clarity the present discussion treats them separately.

THE ALBANIAN-YUGO-SLAV DISPUTE

On March 5th, 1921, the League of Nations was informed by the Prime Minister of Albania that a considerable part of northern Albania had been invaded by Yugo-Slav troops; that refugees from this territory were in a destitute condition; and that the Albanian Government found it difficult to care for these people. It requested the League Council to take steps to bring about the evacuation of the territory.[9] On April 29th, 1921, the Albanian Government addressed a communication to the League in which it alleged that the frontiers of Albania, as fixed by the Treaty of London, had been encroached upon and unlawfully occupied by Yugo-Slav troops.[10] The communication stated that, during the two months of occupancy of this territory by Yugo-Slav troops, 140 villages had been destroyed and 6,603 houses burned; 238 Albanians had been butchered, 200 shot and 300 burned alive. including some women and children; also that considerable property had been confiscated. More than 40,000 Albanians, it was stated, had been obliged to evacuate the devastated region and had become refugees in the interior of Albania. The communication closed with the request that the League take the proper measures to obtain the evacuation of this territory. On June 15th, 1921, the Albanian Prime Minister sent a telegram, again calling the attention of the League to the existing situation and reiterating his belief that the continuance of this state of affairs constituted a menace to peace.[11]

[8] When Albania was admitted to the League it was stated that "the question of her boundaries was not finally fixed and she was admitted subject to the ultimate settlement of her frontiers." The frontiers, therefore, were not affected by her admission to the League. *(Records of the Second Assembly;* p. 661.)

[9] *Report of the Secretary-General to the Second Assembly;* p. 29.

[10] *Official Journal,* July-August, 1921; p. 474.

[11] *Ibid.,* p. 417.

THE DECISION OF THE LEAGUE COUNCIL

At a meeting held on June 25th, 1921, the Council took up the consideration of this dispute. The representative for Albania stated that his Government had made several efforts to settle the controversy with the Yugo-Slav Government by friendly agreement, but without success; also that the Treaty of London clearly defined the frontiers under dispute and that the treaties had not been abrogated; but after the armistice Yugo-Slav troops occupied a so-called line of demarkation on Albanian territory, taking possession of about one-sixth of that country's area. He requested that the Council cause Articles 11, 12, 13 and 15 of the Covenant to be respected, especially the first paragraph of Article 15, according to which it is sufficient if one party makes complaint. He requested that the Council cause this area to be evacuated in accordance with the boundaries established by the Treaty of London, and as soon as it had pronounced this vital decision, to dispatch a commission to Albania to see that it was executed.[12]

The representative of the Yugo-Slav Government, in replying to the Albanian complaint, admitted that Yugo-Slav troops were occupying the area under dispute, but attributed this occupation to the lack of specific demarkation of the boundary, pointing out that the Allied Powers themselves were in doubt about the matter. He then challenged the competence of the League to deal with this dispute, asserting that the Supreme Council should solve the question. In the course of his remarks he said:[13]

> "No clause in any other international treaty, no other decision, not even the Covenant itself, has given the Council of the League of Nations the right of dealing with this question; had it been otherwise the Covenant would have said so expressly. If the League of Nations were to decide on the question, this would not be in pursuance of its normal duties, but an exceptional exercise of powers, which could only be conferred on it by a special mandate. There is no other way, in our opinion, in which the question could come under the competency of the League of Nations."

Mr. Fisher (Great Britain), *rapporteur,* supported the position taken by the Yugo-Slav representative. He stated that the question was being considered by the Conference of Ambassadors, who proposed to pronounce on it; and while he was not prepared to say that they had exclusive competence, nor that the League in certain cases would not be competent to reach a decision, nevertheless the Conference was

[12] *Minutes of the Thirteenth Session of the Council;* pp. 210-212.
[13] *Ibid.;* p. 222.

competent to fix the frontiers of Albania; for under Article 89 of the Treaty of St. Germain, Austria accepted the frontiers of Yugo-Slavia "as those frontiers may be determined by the Principal Allied and Associated Powers"; and in determining the frontier of Yugo-Slavia, that of Albania would be determined. He did not propose to contest the competence of the Conference of Ambassadors. Mr. Fisher also drew the attention of the parties to paragraph 6, Article 15 of the Covenant, by which, since the Council had unanimously agreed to a resolution, the parties were debarred from going to war, and stated that as the Conference was now examining the question, the Council could not intervene; but this did not exclude the possibility of an inquiry by the Council at a later stage; and for the present they could merely forward a resolution and request the Conference to hasten its decision. The resolution, as passed, was as follows:[14]

"The Council of the League of Nations is informed that the Conference of Ambassadors has taken up the Albanian question and that it is discussing it at the present moment. In these circumstances the Council of the League of Nations considers it inadvisable to take up the question simultaneously. Pending the solution, which will be communicated to it, the Council recommends the three parties, in conformity with the Covenant, strictly to abstain from any act calculated to interfere with the procedure in course. The question will be most carefully watched by the Council of the League of Nations, which will give to the defense of the people and nation of Albania every possible attention. The Council recommends that, in the interests of the general pacification and normal development of Albania, the Conference of Ambassadors should take a decision with the least possible delay." [15]

The representative of Albania objected to this resolution, on the ground that the Conference had been discussing the matter for a period of three years and the Albanian people had lost patience. He stated that while his Government bowed before the decision of the League Council, it would not recognize the competence of the Conference of Ambassadors.

The decision of the Council met with criticism from an unexpected quarter. On July 7th, 1921, the French Associations for

[14] *Official Journal*, September, 1921; p. 725.

[15] In explaining this resolution to the Assembly at a later date, Lord Balfour said:

"They thought that it was neither correct nor expedient that they should intervene in a question already in the charge of another body, and they contented themselves with sending an urgent message of appeal to the Ambassadors to make their decisions as regards the Albanian frontier as rapidly as possible. (*Records of the Second Assembly;* p. 187.)

the League of Nations sent the following recommendation to the Secretariat:[16]

"The Councils of the French Association and of the Federation of French Associations for the League of Nations express their regret that the Council of the League of Nations has been so weak as to consent to relinquish, in favor of the Conference of Ambassadors, all responsibility for questions affecting the autonomy and territorial integrity of Albania, a Member of the League of Nations, which appealed to the Council in virtue of Article 15 of the Covenant."

On June 29th, 1921, the Albanian Government officially notified the Council that it refused to acknowledge the competence of the Conference of Ambassadors to reopen the question of frontiers which the Albanian Government held were settled by the Treaty of London.[17] On July 7th, 1921, the Albanian Government again notified the Council of further encroachments by Yugo-Slav troops and specifically denied a Yugo-Slav contention that these troops were there by invitation of factions of Albanians. The note called attention to that part of the Council's resolution in which it had promised to give to the defense of the people of Albania every possible attention, and requested that action be taken to put this promise into effect.[18]

THE APPEAL TO THE GENERAL ASSEMBLY

The Council of the League, having taken no further action concerning the promise contained in its resolution, or upon the subsequent appeals from the Albanians, the Albanian delegation requested the Assembly of 1921 to adjudicate the matter. In presenting the request, the Albanian representative summarized the question as it had been presented to the Council. In conclusion, he proposed that the Assembly take the following action:[19]

"(1) That the League should approach the Great Powers with a view to the evacuation by the foreign troops of the Albanian territory which they had arbitrarily occupied:

"(2) That the League should draw the attention of the Great Powers to the urgent necessity of approaching the Serb-Croat-Slovene Government in order that the League might stop the conflict which was breaking out;

"(3) That the League should without delay send a Commission to the spot and instruct it to prevent, by its mediation, the recurrence of similar conflicts in the future; and

"(4) That the representatives of the States forming part of the Assembly might be good enough to approach their respective Governments with a

[16] *Official Journal,* October, 1921; p. 881.
[17] *Ibid.;* July-August, 1921; p. 483.
[18] *Ibid.*
[19] *Records of the Second Assembly, Committees,* Vol. II; p. 543.

view to obtaining the official recognition of the Albanian Government in order to put an end to the diplomatic deadlock with which this country was faced."

The attitude of the Council to this appeal concerning its inaction was expressed in a report by Lord Balfour, submitted on September 2nd, 1921, and adopted by the Council. He pointed out that against the decision of the Council, declining to deal with the frontiers, pending a decision of the Conference, the Albanian delegates had protested first to the Council and then to the Assembly. He then stated:[20]

"The result of these two procedures is that the Assembly has been requested by Albania to deal with the determination of the Albanian frontiers, and the Council has been asked to prevent these frontiers being violated by the action of the Serbs. The two subjects are evidently intimately connected, and it seems absurd to send one of them to the Assembly and the other to the Council. I suggest, therefore, that as the Assembly has been requested by the Albanians to deal with the determination of the frontiers, they should also be asked to deal with the violation of the frontiers."

The situation in the Assembly was summarized by Viscount Cecil when he said:[21]

"The Assembly might, under Articles 11 and 15, make a recommendation (they could not do more) to the various parties as to the frontiers they should accept. That would involve appointing a Committee to consider the matter and sending representatives to the spot to hear evidence, and so on. . . . Even if it were carried out, it would involve considerable delays; the Assembly would have to be adjourned and meet again in some months' time.

"The second course was to await the decision of the Conference of Ambassadors and to recommend the parties to accept it whatever it might be. The position had been made more difficult by the great delay which had occurred, a delay which he very much regretted. Such a course had the advantage that the decision of the Conference of Ambassadors had, he gathered, been accepted in advance by Serbia and Greece.

He then suggested the adoption of two resolutions, as follows:[22]

"(1) The Assembly having considered the appeal of Albania to the Assembly, dated 29th June, 1921, and the reference by the Council to the Assembly of the allegation by Albania against the Serb-Croat-Slovene State, dated 2nd September, 1921;

"Taking note of the fact that the Serb-Croat-Slovene State and Greece have recognized the Principal Allied and Associated Powers as the appropriate body to settle the frontiers of Albania;

[20] *Official Journal,* December, 1921; p. 1094.
[21] *Records of the Second Assembly, Committees,* Vol. II; p. 549.
[22] *Ibid.;* p. 550.

"Understanding that the Principal Allied and Associated Powers are very near agreement on the question submitted to them;

"Recognizing the sovereignty and independence of Albania as established by her admission to the League

"Recommends Albania now to accept the forthcoming decision of the Principal Allied and Associated Powers."

"(2) The Assembly further taking note of the allegations of Albania against nationals of the Serb-Croat-Slovene State and of the allegations of the Serb-Croat-Slovene State against certain tribes and individuals in Albania;

"Taking note also of statements made that there is serious unrest in Southern Albania and Northern Epirus;

"Requests the Council forthwith to appoint a small Commission of three impartial persons to proceed immediately to Albania and report fully on the execution of the decision of the Principal Allied and Associated Powers as soon as given, and on any disturbances which may occur on or near the frontier of Albania.

"The Commission should have power to appoint observers or other officials, being impartial persons, to enable it to discharge its functions."

There was objection, however, to the passage of the second resolution. The French delegate pointed out that:[23]

"Since the Conference of Ambassadors had full powers to take a decision upon the question, should it not also be allowed to decide upon the method of enforcing this decision?"

However, the two resolutions, as proposed, were passed. On the question whether the various parties would accept the forthcoming decision of the Conference of Ambassadors, the Record of the Assembly is explicit. On September 26th, 1921, Mr. Fisher, *rapporteur*, said:[24]

"The Delegate of the British Empire understood that the Commission of Experts of the Council of Ambassadors had reached a decision on the question in August, 1921, and only the decision of the Conference of Ambassadors was awaited. . . . Greece and the Serb-Croat-Slovene State had recognized the competence of this Conference and had also bound themselves to accept its decision."

Albania also intimated that it would accept the decision of the Conference. The Record of the Assembly of September 26th, 1921, contained this item:[25]

"As regards the decision of the Conference of Ambassadors, the Delegate stated that, if this decision was applied, Albania, weary of her present condition of uncertainty, would not oppose it."

[23] *Records of Second Assembly, Committees*, Vol. II; p. 551.
[24] *Ibid.;* p. 544.
[25] *Ibid.;* p. 552.

It, therefore, appears that as early as August, 1921, the Principal Allied Powers had secured an agreement from the two aggressors, Yugo-Slavia and Greece, to abide by the decision of the Conference of Ambassadors; and, in September, Albania also indicated its intention to accept that decision. As against this affirmative record no contrary facts have appeared. It is, therefore, clear: (1) That the Council declined to act upon the controversy presented to it by Albania; (2) that Albania, because of the Council's inaction, appealed to the Assembly; (3) that the Assembly declined to act upon the appeal, other than to pass two resolutions. In one it declined to intervene because the Conference was near an agreement, but admonished Albania to accept the decision of the Conference in advance, irrespective of what it might contain. In the other, it requested the Council to appoint a small Commission to report fully on the execution of the decision of the Principal Allied and Associated Powers and upon any disturbances which might afterward occur; (4) that the League Council, on September 26th, 1921, was aware that the Serb-Croat-Slovene State and Greece had agreed in August to accept the forthcoming decision of the Conference of Ambassadors; (5) that the Albanian delegation informed the Assembly, on September 26th, to the effect that if the decision of the Conference of Ambassadors were applied, Albania would accept; (6) that the Commission of Inquiry was to report only upon the *execution of the decision of the Conference of Ambassadors.*

THE BRITISH APPEAL TO THE LEAGUE

During this period of conference and delay, the situation in Albania grew worse. Although a Committee of Experts, appointed by the Conference of Ambassadors made its report in August, 1921, and the terms had been agreed to by Greece and the Serb-Croat-Slovene State, the Conference did not see fit to announce its decision until nearly three months later. On November 7th, 1921, Mr. Lloyd George, then British Premier, two days in advance of the announcement of the decision by the Conference, sent to the League Council the following telegram:[26]

"Continued advance of Serb-Croat-Slovene forces into Albania being of a nature to disturb international peace, His Majesty's Government desire to call the attention of the Council thereto and request that you will take immediate steps to summon a meeting of the Council to consider the situation and to agree upon measures to be taken under Article 16 in the event of the Serb-Croat-Slovene Government refusing or delaying to execute

[26] *Official Journal,* December, 1921; p. 1182.

their obligations under the Covenant. Ambassadors' Conference has now decided frontiers of Albania, which will at once be notified to interested parties."

On November 9th, 1921, the Conference formally announced its decision, confirming, with certain modifications, the frontier line established in 1913 by the Treaty of London. It appointed a Delimitation Commission, charged with the duty of marking on the spot the frontiers set forth in the decision. It notified the parties to the dispute, and also the League Council, of the terms of the decision. On November 14th, 1921, the Yugo-Slav Government wrote to the Conference of Ambassadors, formally accepting the decision, as follows:[27]

"Placed in this position, the Royal Government states with the greatest regret, and under protest, that it bows to the decision of the Conference of Ambassadors, in order to avoid the dangerous consequences of non-acceptance, while remaining firmly convinced that subsequent events connected with order and peace in the Balkans will vindicate the anticipations of the Royal Government, and the work of fixing the frontier on the ground will supply proof of the justice of its point of view."

On November 18th, 1921, the Conference of Ambassadors announced a supplemental decision, constituting a demarkation zone which should be free of all troops, either Albanian or Serbian, until the frontier had been traced on the spot. The Conference requested the Commission of Inquiry, sent out by the League Council, to report immediately any infringement of this supplemental decision to the Delimitation Commission sent out by the Conference.

On November 19th, 1921, pursuant to Mr. Lloyd George's telegram, the Council met and passed the following resolution:[28]

"The Council of the League of Nations,

"Having heard the statement concerning the information which led the British Government to request, in its telegram of November 7th, the immediate convocation of the Council 'to study the situation created by the advance of the Serb-Croat-Slovene troops into Albania and to agree upon measures to be taken';

"Having heard the explanations given by the representatives of the Serb-Croat-Slovene and Albanian Governments;

"Considering that the Assembly of the League of Nations recognized on October 3rd that the Principal Allied and Associated Powers were responsible for fixing the definite frontiers of Albania;

"Considering that the Conference of Ambassadors decided on November 9th, 1921, that it was necessary to confirm with certain specified alterations the line of the frontiers of Albania established in 1913 by the Conference of Ambassadors in London; and considering that the frontiers of Albania are consequently now fixed and must be respected in accordance

[27] *Official Journal,* December, 1921; pp. 1196-1197. [28] *Ibid.;* p. 1192.

with the guarantees assured to the Members of the League of Nations by the Covenant.

"The Council notes the declaration of the Prime Minister of the Serb-Croat-Slovene State, in which he affirms that the Serb-Croat-Slovene State is taking, in accordance with the above decision, all steps to assure the immediate evacuation of its troops from all territory belonging to the Albanian State. The Council notes also the assurance given by the representatives of the two States that they intend to live as neighbors maintaining good relations with each other, which implies that neither shall take, either directly or indirectly, any action to provoke or encourage any movement which might disturb the internal peace of its neighbor.

"The Council is glad to note the conciliatory attitude adopted in its presence by the Albanian and the Serb-Croat-Slovene Governments, which augurs well for the future."[29]

"The Council decides to give the Commission of Enquiry sent to Albania in accordance with its resolution of October 6th, the following instructions:

"1. The Commission shall keep the Council informed of the retirement of both the Serb-Croat-Slovene and Albanian troops from the provisional zone of demarkation provided for in the decision of the Conference of Ambassadors of November 18th, 1921 (Annex 8, page 1210); it shall keep in touch with the Delimitation Commission whenever necessary and shall place itself at the disposal of the local authorities to assist in carrying out the evacuation so as to avoid incidents.

"2. The Commission shall satisfy itself that no outside assistance is given in support of a local movement which might disturb internal peace in Albania. The Commission shall examine and submit to the Council measures to end the present disturbances and to prevent their recurrence."

The Commission of Inquiry, thus instructed by the Council, began its work at Durazzo on November 19th, 1921, and co-operated with the Delimitation Commission, sent out by the Conference of Ambassadors.[30]

[29] It will be observed that no indication is here given that this conciliatory attitude was adopted in August, 1921, and acknowledged by letter openly on November 14th by the Yugo-Slav Government in its letter to the Conference of Ambassadors; on the contrary, this resolution gives the impression that such attitude was assumed first on November 19th in the presence of the Council.

[30] *Official Journal,* June, 1922; p. 572.

The writer regrets that the pacificatory work subsequently carried on by this commission is beyond the scope of the present discussion and therefore cannot be included, as not forming part of the decision itself. The revolution against feudalism in Albania, ending in June, 1924, in the defeat of the Government, does not, however, indicate that internal conditions have been stabilized by the assistance given to Albania by the League. The new administration under Archbishop Fan Noli intends to try its own experiment in establishing a democracy. To this end the Albanian Government has dismissed M. Hunger, the Dutch financial adviser furnished by the League. The reason given is that his conception of the duties of his post differed from that held by the Government. Also, M. Hunger and his staff were costing Albania 100,000 gold francs a year, and it believed itself too small a country to carry such a burden.

The complete record of the settlement of this dispute appears to be as follows: On March 5th, 1921, Albania made its first request to the League for intervention; on April 29th it repeated the request, submitting additional facts; on June 25th, the Council voted to abstain from action; on July 5th, the Council was again notified of Yugo-Slav advances; on June 29th, Albania asked to have its appeal placed on the agenda of the Assembly; on September 26th, it was stated in the Assembly that Yugo-Slavia, Greece and Albania would accept the forthcoming decision; on October 3rd, the Assembly abstained from action, but authorized a Commission to report on the execution of the decision of the Conference, whenever it was rendered; on November 7th, Mr. Lloyd George requested the Council to see that the Conference's forthcoming decision was complied with and not delayed; on November 9th, the Conference rendered the long-expected decision, acceptance having been agreed to by the parties; on November 14th, Yugo-Slavia formally accepted the decision in writing; on November 19th, the League Council met and passed a resolution noting that the dispute was satisfactorily settled, and sent instructions to its Commission of Inquiry, already in Albania, to begin work.[31]

THE CLAIM OF MEMBERS OF THE LEAGUE COUNCIL

In view of this explicit record, upon what does the claim rest that the League took part in the settlement of this dispute and was, therefore, influential in stopping a war, when an active invasion had been in progress unmolested for ten months?

The claim appears to rest primarily upon the telegram sent by Mr. Lloyd George on November 7th, 1921. But scarcely in harmony with interpretations of the text of that telegram is the statement of the representative from Great Britain, Mr. Fisher. For he had already

[31] The question of the Yugo-Slav-Albanian frontier was revived by a request from the Yugo-Slav Government to the Conference of Ambassadors, for a revision of a section of the southeastern boundary near Lake Ochrida, including the Monastery of Sveti Naum. An international commission was entrusted with the re-delimitation of this frontier in May, 1924. Apparently the Commission exceeded its authority in making its recommendation; the question also arose in the Conference, whether a boundary decision once made can be changed. The whole question was, therefore, referred to the League of Nations on June 4th, 1924. The League, on June 17th, 1924, submitted to the Permanent Court for an advisory opinion, the question whether the Conference has authority to revise its own decision. The restrictions on the question submitted to the Court seem to be somewhat similar to those noted in the case of the Polish-Czechoslovak frontier. (Chap. XXXI.) The governments concerned agreed to submission of the dispute, reserving, however, the right to express their points of view before the Court.

informed the Assembly that he understood the Serb-Croat-Slovene Government had accepted in August the forthcoming decision. This understanding was corroborated by Viscount Cecil. There could, therefore, have been no question of a *refusal* of the decision by the Yugo-Slav Government. Therefore, there remained only the question of *minimizing the delay*. This is quite another question and pertains to the execution rather than to the rendering of a decision.

The claim appears further, to rest upon the resolution of the Council adopted on November 19th, 1921, noting the conciliatory attitude adopted by the Albanian and Serb-Croat-Slovene Governments. While this resolution gives the reconciliation the appearance of having occurred on the previous day for the first time in the Council, the Assembly record of September 26th, 1921, conveys the opposite impression, wherein it is stated that Albania and the Serb-Croat-Slovene State had already agreed to accept the decision of the Conference.

The claim appears finally to rest upon the report made by the Secretary-General to the Assembly of 1922; wherein he stated:[32]

"The decision of the Conference of Ambassadors was on the point of being accepted by the Serb-Croat-Slovene Government as well as by the Government of Tirana when the Council met."

This statement is not in accord with Mr. Fisher's report; nor with the statement of the Albanian delegation; nor with the letter from the Serb-Croat-Slovene Government on November 14th to the Conference of Ambassadors. All of these statements are in accord that on September 26th, 1921, all three parties had agreed to accept the forthcoming decision. The statement made by the Secretary-General is frequently quoted in the United States in support of the contention, and is largely responsible for the belief that the League intervened in the Albanian Question and averted a war.

But whether the parties had agreed in advance to accept the decision, and to whose influence such agreement was due, is immaterial. The dispute arose over a boundary question; the Conference alone had the authority and power to settle that question and thus end the dispute. In its own good time it did act and settled the dispute and restored peace. Had there been no League, the course taken would have been the same; and had there been no Article 16 of the Covenant, the forces of the Principal Allied Powers were fully capable of exerting the power necessary to compel respect for their decision.

[32] *Report of the Secretary-General to the Third Assembly;* p. 29.

THE ALBANIAN-GREEK DISPUTE

This dispute concerned the southern boundary of Albania; the one in process of delimitation when the Italian Commissioners were murdered on August 27th, 1923. The matter came before the League Council in a communication of April 29th, 1921, from the Albanian Government. The note contained the following paragraph:[33]

"The Greeks, moreover, continue to occupy a district containing twenty Albanian villages east of Koritza, pending a decision by the Great Powers with regard to its evacuation. Under these circumstances, I beg to draw your attention to the above facts, and to request you to be good enough to take the steps which the situation demands to obtain the evacuation by Greece and Serbia of those districts of Albanian territory which these two powers are now occupying, and thus to restore peace and harmony to a sorely tried country."

On May 10th, 1921, the Administrative Council of the League of Epirotes laid before the Council counter-charges against Albania in which it alleged that oppression, violence, massacres and theft were being practiced by the Albanians in this disputed territory.[34] On May 18th, the Council received a communication from Albania denying these counter-charges and presenting other charges, and again requesting that the League call the attention of the Greek Government to the complaints made by Albania to the League on April 29th.[35]

On June 21st, just prior to the meeting of the Council, the Albanian Minister of Foreign Affairs presented a letter, setting forth his observations on the issue, including a history of the dispute. The communication requested an inquiry by the League into conditions obtaining in this territory.[36] Both Greece and Albania urged that the other be restrained and that peace be restored, pending the decision of the Conference of Ambassadors. The League Council, by its resolution of June 25th, 1921, abstained from intervening in this dispute, so long as the Conference had the matter under consideration.[37]

It appears from what occurred on August 27th, 1923, at Janina, that the pacificatory measures undertaken by the Commission of Inquiry of the League and by the Delimitation Commission of the Conference, during the interval that elapsed between the decision of the Conference on November 9th, 1921, and the actual delimitation of the boundary in August, 1923, were not of a nature sufficiently to allay the passions and hatred arising from this controversy. The

[33] *Official Journal,* July-August, 1921, p. 474.
[34] *Ibid.;* p. 476.
[35] *Ibid.;* p. 475.
[36] *Ibid.;* July-August, 1921; p. 478.
[37] See p. 186.

murders at Janina were the direct consequence of the long delay in making a boundary decision and of the manner in which that decision was executed; for during this time hatred and antagonism had greatly increased between the two countries.[38]

COMMENTARY

The settlement of the Albanian Controversy is the first instance where the Council formally deferred to the Conference of Ambassadors concerning a matter before that body. Albania, a small country invaded by the forces of a large country, both members of the League, appealed for help. It complained to the Council concerning the destruction of villages and the killing of its inhabitants. Whereupon the Council laid down the principle that whenever a controversy is under consideration by the Conference of Ambassadors, it is inadvisable for the Council to act. It did not act beyond the enunciation of this principle. The invasion, the pillaging and the killing continued; finally, the Conference settled the dispute by deciding the boundary line between the two countries. The parties to the dispute agreed in advance to accept the decision, whatever it might be, and the war ceased. The Council of the League then appointed a Commission of Evacuation to assist the Conference in executing its decision and in facilitating evacuation and in performing other post-war and post-decision duties.

The meeting of the Council for which so much is claimed did not prevent a war, for one had been in progress for ten months; it did not settle the dispute, for that was done in Paris by the Conference; it did not induce the parties to accept the settlement, for that had been agreed to before the Council met; and its threat to apply Article 16 was a post-mortem gesture of moral authority, unnecessary because

[38] This antagonism still seems to exist. In December, 1923, a pamphlet was published in Albania, accusing Greece of the Janina murders. (See p. 207). Greece thereupon withdrew its diplomatic representative from Albania, until the Albanian Government formally apologized for the pamphlet.

Albania, also in December, 1923, appealed to the League on the subject of the treatment of Mussulman Albanians in Greece. This question was dealt with at the twenty-seventh meeting of the Council. The Greek representative made a declaration that it was not the intention of the Greek Government to include Albanian Mussulmans in the exchange of Greek and Turkish populations, and the Council referred the matter to the Mixed Commission for the exchange of Greek and Turkish populations. (*Official Journal*, February, 1924; pp. 364-368.) A recent protest of the Greek Government to the Conference of Ambassadors requests the revision of a decision awarding fourteen villages to Albania. The Greek intention seems to be to refer the matter to the League of Nations in the event that the Conference should not accede to their request.

the military authority of the Allied Powers had been disclosed some time previously.

This dispute is noteworthy for a significant contribution to precedent: namely, that on appeal by a member state from the Council to the Assembly, the latter body will take no decisive action to prevent war when the Conference has the matter under consideration or when the matter is before the Council. Therefore, the high probity of the League is endangered by giving countenance to the claim that it either prevented a war or settled the dispute.

CHAPTER IX

THE ITALO-GREEK DRAMA

The Island of Corfu lies off the coast of northern Epirus, in the Ionian Sea, near the narrow entrance of the Adriatic Sea. This position gives it a strategic importance, which, added to the beauty of the island, has made it a coveted prize to all nations in the Mediterranean. Greek in ancient times, then held by Romans, later by Normans, still later by various Italian trading cities, and since the fourteenth century by Venice, Corfu finally in 1815 was placed under the protectorate of Great Britain, and was, in 1864 ceded to the Kingdom of Greece. At the same time the Island was neutralized, and its neutrality guaranteed by Great Britain, France and Russia. This guarantee was renounced by France and Great Britain in the Treaty of August 10th, 1920, with Greece.

This international drama, in which Corfu took a leading part, was enacted without war and is now a closed incident. But the drama itself has made a profound impression upon the sense of security in Europe and upon confidence in the Covenant as an instrument to prevent war. As a test of the character and of the operation of that instrument, its contribution is of the first importance.

The drama comprises four acts and an epilogue. The first act took place at Janina, on Greek territory, when General Tellini and four other Italian members of the Delimitation Commission were murdered. The second act was staged when Italian vessels bombarded Corfu and Italian troops occupied that Island. The drama then shifted to Paris, where the Conference of Ambassadors hurriedly assembled, and finally to Geneva, where the League was in session. The epilogue has been written by a Special Commission of Jurists, and the complete drama is now before the world for review.

ACT I—EVENTS AT JANINA

The frontier between Greece and Albania had been the subject of dispute since the war, and failure to agree resulted in bitter debate and considerable fighting between the two countries. The question of settling the boundary line had been before the Supreme Council, but as it had taken no final action, Albania appealed to the League Council in 1921 for assistance.[1] The League Council, however, found it inadvisable to take any action on a matter before the Supreme Council, and

[1] Chapter VIII; p. 184.

the situation continued until November, 1921, when the Supreme Council established a provisional boundary line and sent a Delimitation Commission to fix, on the spot, a permanent line between Albania and Greece. This Commission was engaged in these duties when, on August 27th, 1923, its Italian members were murdered on Greek territory, near Janina, by unknown assassins, who escaped to the mountains. The secretary of the Delimitation Commission immediately sent news of the murders to the headquarters of the Conference of Ambassadors in Paris, and a meeting of that body was promptly called to deal with the situation.[2]

In the meantime, the Italian Government formulated its demands for satisfaction and, on August 29th, 1923, sent a note to the Greek Government, which contained the following:[3]

"(1) An unreserved official apology to be offered to the Italian Government at the Royal Legation at Athens through the supreme Military Authority of Greece.

"(2) A solemn memorial service for the victims of the massacre to be held in the Catholic Cathedral at Athens, and all the members of the Government to be present.

"(3) Honours to be paid to the Italian flag, by the Greek Fleet in the port of the Piraeus represented by a naval squadron which will visit the Piraeus for this special purpose; these honours to consist of a salute of 21 guns fired by the Greek warships, which will hoist the Italian flag while firing the salutes.

"(4) A drastic enquiry to be carried out by the Greek authorities at the place of the massacre in the presence of the Royal Italian Military Attache, Colonel Perrone, for whose safety the Greek Government will be responsible; the enquiry to be carried out within five days of the acceptance of these demands.

"(5) Capital punishment for all the authors of the crime.

"(6) An indemnity of 50 million Italian lire to be paid within five days of the presentation of this note.

"(7) Military honours to be paid to the bodies of the victims at the moment when they are placed on board an Italian vessel at Preveza.

"The Italian Government requests the Greek Government to reply without delay."

The Greek Government, on August 30th, sent a reply to the Italian Government, agreeing to the following proposals:[4]

"(1) It will express its unreserved regret to the Italian Government, in full official form, for which purpose the Officer Commanding the Military District of Athens will call upon the Italian Minister;

[2] The Supreme Council of Premiers had, in the meantime, become the Conference of Ambassadors.

[3] *Official Journal,* November, 1923; p. 1413.

[4] *Ibid.;* p. 1414.

"(2) It will hold a memorial service for the victims in the Catholic Church at Athens and all the Members of the Government will attend.

"(3) On the same day, honours will be paid to the Italian Government in the following form:

"A detachment from the garrison of Athens will parade before the Italian Legation and will salute the Italian flag with the usual honours.

"(4) All honours will be paid in the same solemn manner to the victims at Preveza when their bodies are placed on board the Italian vessel."

The Greek Government declared itself unable to accept points 4, 5 and 6 of the Italian demands, as stipulated, but expressed its willingness to grant to the families of the victims an equitable and just amount of indemnity; and to accept the services of Colonel Perrone, the Italian Military Attache in Athens, with a view to assisting a Greek commission of inquiry, by means of any information at his disposal which might lead to the conviction of the culprits. These differences between the Italian demands and the Greek answer created a deadlock in negotiations and concluded the first scene in the controversy.

ACT II—THE OCCUPATION OF CORFU

The second act occurred on August 31st, 1923, when the Italian Minister in Athens handed the Greek Government a note stating that the Italian Government considered the Greek answer insufficient and that orders had been given to disembark at Corfu a contingent of Italian troops. The note also declared that this act was not to be regarded as one of war, as the Island was taken merely as a pledge to guarantee compliance with Italian demands. On the afternoon of the same day an Italian fleet bombarded Corfu and took possession of the Island, following this move with the occupation of some adjacent islands. During the action, several people were killed, including a number of refugee children who were wards of the League of Nations. Public interest immediately shifted from Janina to Corfu, by reason of the second tragedy and because of the strategic importance of this Island to the Adriatic Sea. The dispute between Italy and Yugo-Slavia over Fiume was then at its height, and it was but natural that other European Powers should view this occupation in relation to that controversy.[5]

It will be noted, at the close of the second act, that the dispute between Italy and Greece concerned the form of reparations to be made to Italy for the insult to its honor and dignity, caused by the murder of the Italian members of the Commission; that Italy and Greece were unable to agree as to the terms of reparations and the occupation of

[5] Chap. X; p. 236.

Corfu was announced by Italy to be a pledge that these reparations would be forthcoming.

ACT III—THE CONFERENCE OF AMBASSADORS

The third act of this drama consists of four scenes. The first took place in Paris when the news of the murders was received. A meeting of the Conference of Ambassadors was immediately called, and, on August 31st, 1923, that body sent a note to the Greek Government through the French *charge d'affaires* in Athens, protesting against the crime committed and demanding that the Greek Government proceed at once to make an inquiry in order to apprehend the murderers. In this note the Greek Government was also notified that the Conference would determine the reparations due to Italy.[6] The Conference deemed itself justified in taking this action on the ground that members of its Commission, engaged in carrying out duties assigned under the Treaties, were the victims and the wrong committed was not alone to Italy, but to the Allied Powers.

The action of Italy in bombarding Corfu on the day this note was despatched, being a consecutive step in a dispute over which the Conference had already assumed jurisdiction, the Conference considered this to be part of the settlement; indeed, the whole question shifted from one of adequate reparations due to Italy, to the price to be paid for the evacuation of Corfu. It will be recalled that Corfu having been a demilitarized area under the guarantee of certain of the Allied Powers, these Powers naturally had an immediate interest, not shared by other states, in its evacuation. The occupation of Corfu, therefore, but added a new reason for the assumption of jurisdiction by the Conference. The position of the Conference was further strengthened when the Greek Government, on September 1st, sent a note to the Conference acknowledging its jurisdiction, and agreeing to pay whatever reparations the Conference deemed to be just if the responsibility of the Greek Government was proved.[7] It proposed that the Conference appoint an international commission to make an inquiry and that the inquiry be extended into Albanian territory. This acknowledgment placed the Conference in full control of the situation, as the Italian Government had already accepted its mediation in the matter.

The Conference then proceeded with the settlement, and on Septem-

[6] *Journal de Genève,* September 2nd, 1923.
[7] *Ibid.;* September 3rd, 1923.

ber 5th, 1923, sent the following note to the Greek Government apprising it of the progress being made:[8]

"The Conference of Ambassadors has considered the reply from Greece to its note regarding the murder of the Chairman of the Inter-Allied Greco-Albanian Delimitation Commission and of the other members of the Italian Military Mission in the Janina district. It has noted, in particular, that Greece declares her willingness, if her responsibility is proved, to agree to make any reparation which the Conference may regard as just and that the Greek Government suggests the appointment of a commission of enquiry, consisting of the delegates of the three Powers represented on the Delimitation Commission, to assist actively in the work of discovering the guilty parties. The Conference of Ambassadors, recognizing that it is a principle of international law that States are responsible for political crimes and outrages committed within their territory, at once considered how the enquiry should be conducted. The next meeting of the Conference will be held not later than Friday morning next."

Inasmuch as this note laid down what appeared to be a new principle of law, namely, that a state is responsible, not for the repression or punishment of crime, but for crimes committed in its territory, it created consternation. At this point, the Conference took notice of the League, then meeting in Geneva, and sent a copy of this note, thus notifying the League officially that Greece had accepted the jurisdiction of the Conference, which body was proceeding with the inquiry and settlement of the dispute.

On September 7th, the Conference received the Minutes of a meeting of the Council of the League of Nations, with certain recommendations concerning the fulfillment of the Italian ultimatum. The receipt of this communication was acknowledged by the Conference.[9]

On September 8th, the Conference announced the terms of settlement in a note addressed to the Greek Government, a copy of which was forwarded to the League of Nations. The terms were stated as follows:[10]

"The Conference of Ambassadors, . . . noting in this respect that the assault of August 27th was one of a distinctly political character, has been committed on Greek territory, that the persons who were the victims thereof were entrusted with an official mission by the Conference of Ambassadors in agreement with the Greek Government, which had to insure its security (*avait a assurer la sécurité*) and that the victims all belonged to the Italian Delegation on the Commission, considering that such an assault committed in the circumstances directly entails the responsibility of the State on the territory of which it has taken place, decides to

[8] *Official Journal*, November, 1923; p. 1294.
[9] See p. 217 for text.
[10] London *Times*, September 10th, 1923.

demand of the Greek Government the reparations and the sanctions hereinafter enumerated:

"1. Apologies (*des excuses*) shall be presented by the highest Greek military authority to the diplomatic representatives at Athens of the three Allied Powers whose delegates form part of the Delimitation Commission.

"2. A funeral service shall be celebrated at Athens in honour of the victims in the Catholic Cathedral in the presence of all the members of the Greek Government.

"3. The day of the funeral the warships of the three Allied Powers will arrive before Phaleron after 8 o'clock in the morning, the Italian Naval Division leading.

"The Greek Fleet shall salute the Italian, British and French flags at the rate of twenty-one guns per flag. After that the warships of the three Powers shall anchor before Phaleron.

"The salute shall be returned shot for shot by the Allied vessels immediately after the funeral service, during which (the funeral service) the flags of the Greek Fleet and of the warships of the three Allied Powers shall be at half-mast.

"4. Military honours shall be rendered to the bodies of the victims on their embarkation at Prevesa by a Greek unit with a flag.

"5. The Greek Government undertakes to ensure in all the desirable conditions of celerity the search for and the exemplary punishment of the culprits.

"6. A special commission composed of delegates of France, of Great Britain, of Italy, and of Japan, under the presidency of the Japanese delegate shall supervise the operation of examination and inquiry pursued to that effect by the Greek Government; these operations must be effected at the latest by September 27th, 1923.

"The Commission delegated by the Conference of Ambassadors shall have all powers to assist at the said operation and to require the Greek authorities to proceed to all supplementary examination, interrogation, and inquiry. It will submit its report and conclusions to the Ambassadors' Conference.

"The Greek Government shall ensure on its territory the safety of the Commission. It will give that Commission all facilities for the fulfilment of its task and will defray the expenses which the Commission shall have to make on this account.

"The Conference of Ambassadors invite, moreover, as from now the Albanian Government to take useful measures to enable the said Commission, which is duly empowered to that effect, to proceed if it should deem it necessary on to Albanian territory and there to proceed, in agreement with the Albanian authorities to all investigations of a kind to facilitate the search for and punishment of the culprits.

"7. The Greek Government undertakes to pay to the Italian Government for the murder of its delegates an indemnity, the amount of which shall be determined in summary procedure by the Permanent Court of International Justice at The Hague, judged on the strength of the report of the Commission mentioned in Paragraph 6; this report shall be for-

warded to the Court of Justice by the Conference of Ambassadors together with their observations.

"The Greek Government shall deposit without delay as a caution in the Swiss National Bank, a sum of fifty million Italian lire; this deposit shall be effected under the following heading: *'Pour être remis, en tout ou en partie, au Gouvernement Italien sur décision de la Cour Permanente de Justice Internationale de La Haye.'*

"The Conference takes note of the fact that the Italian Government confirms that the occupation of Corfu and of the adjacent islands has no other object than to obtain satisfaction for the demands which that Government has made to the Greek Government, and of the fact that these demands are covered by the conditions above formulated by the Conference, invites the Greek Government to inform without delay simultaneously and separately each of the diplomatic representatives at Athens of the three above mentioned Powers of its integral acceptance of the preceding conditions."

On September 9th, the Conference announced that both Italy and Greece had accepted these terms.

On September 13th, in a further note to Greece, the Conference prescribed the manner in which its decision should be executed (a copy being sent to the League), and the second scene shifted to Greece, where the following orders were executed, as prescribed:[11]

"The Conference, having taken note of the acceptance by the Greek Government of the conditions set forth in the note addressed to it on September 8th, and having also noted the request submitted by the Greek Government with reference to the evacuation of the Island of Corfu, and having further taken note of the letter from the Greek Minister in Paris, dated September 11th, which is principally concerned with the payment of fifty million Italian lire into the Swiss National Bank under the conditions laid down, has the honour to inform the Greek Government that the Allied Governments are no less anxious than the Greek Government to bring to an early conclusion the abnormal situation created by the crime committed on August 27th, and that the evacuation of Corfu will take place as soon as the conditions laid down in the note of September 8th have been fulfilled in the following manner:

"(1) The Allied Diplomatic Representatives at Athens will fix, in consultation with the Greek Government, the date on which they are to receive the expressions of regret for which provision is made in the Conference's Note, and which will be offered not later than September 18th. (2) The funeral service in honour of the victims will be held at Athens on September 19th, at 10:30 a. m. (3) The warships of the three allied Powers will arrive in the harbour of Phaleron on the same day, and the details regarding the fulfilment of the third condition will be communicated to the Greek Minister in Paris. (4) Honours will be paid to the bodies of the victims on September 19th, on which day they will be placed on board ship at Prevesa. (5) The Inter-Allied Commission of Control will enter upon its work

[11] *Official Journal,* November, 1923; p. 1305.

at Janina on September 17th; not later than five days after its arrival, it will submit a telegraphic report on its initial conclusions.

"Should the authors of the crime not yet have been traced the Commission will state under what conditions its investigations have been carried out, and the Conference, having seen the report, will decide whether the fifth condition contained in its note of September 8th can be regarded as having been fulfilled. Should this condition not have been fulfilled, in view of the Italian Government's statement that it would, in any event, evacuate Corfu on September 27th, the date fixed by the Conference of Ambassadors for the conclusion of the Greek inquiry, the Conference reserves the right to notify Greece of any other measures of a coercive or punitive nature which may be taken against her by the Allied Powers. Such measures may consist, in particular, in the payment to Italy of a sum of fifty million Italian lire, and in that case the Conference will request the Permanent Court of International Justice at The Hague to restore to Greece the security deposited by her, and no further application will be made to The Hague, as stated in paragraph 7 of the Note of September 8th, unless any special application is made to the Court by Italy for charges entailed by the occupation."

The Greek Government accepted these demands in their entirety, and the National Bank of Greece addressed a telegram to the Swiss National Bank, as follows:[12]

"You will receive through the London County and Westminster Bank of London, to the order and for the account of the Greek Government, a deposit of fifty million Italian lire, with instructions that the sum is to be remitted in whole or part to the Italian Government upon the decision of the Permanent Court at The Hague. Please advise the Secretary-General of the League of Nations without delay as to the amount of the deposit and the object for which it is made."

The Conference then appointed an Inter-Allied Commission, composed of Colonel Shibouya (Japan), Colonel Beaud (Italy), Lieutenant Colonel Lacombe (France) and Commander Harence (Great Britain), under the presidency of the Japanese member.

The third scene took place in Janina, whence this Commission proceeded to make its investigations on September 17th. It made its first report on September 21st, of which the following is a summary:[13]

"At the present stage of its labours, both by reason of the difficulties and of the complexity of the problem to be solved, the Inter-Allied Commission of Janina cannot yet formulate a firm, definite, and unanimous opinion on the responsibilities incurred in the outrage of August 27th. From

[12] *Official Journal,* November, 1923; p. 1304.

[13] The full text was not made public by the Conference, but was secured and published by the *Manchester Guardian Weekly,* December 18th, 1923.

evidence collected and from observations made by the Commission it follows that—

"1. The crime was prepared and carried out in conditions so minutely studied that clearly it is a case either of a political crime or of a vendetta carried out against General Tellini, in which the other victims were sacrificed by the assassins only for the purpose of removing all the witnesses of the deed.

"2. The inquiry carried out by the Hellenic authorities after the crime certainly shows cases of negligence on the part of those authorities, but the observations made up to this date are not complete or decisive enough to allow the Commissioners to judge whether the Greek Government ought to be held responsible for the negligences revealed or whether these negligences are the result of the defective organization of a police administration which disposes of imperfect means of criminal investigation. For the moment the Italian Commissioner for reasons more particularly of a moral order inclines rather to the first hypothesis, while the other three Commissioners incline to the second.

"3. Search for the culprits: On this head also the Commission has established several cases of Greek negligence, but it ought to be pointed out that on the one part the atmosphere of mystery and fear which surrounds the crime, and on the other part the nature of the territory, make investigations extremely difficult.

"4. The Commission is actively pursuing its investigations, and is making energetic representations to the Greek authorities to continue the search for the culprits."

The Commission continued its investigation from September 22-27th, and made a supplemental report in which it stated: That a violent press campaign was launched before the crime, accusing General Tellini of unfairly favoring Albania to the detriment of Greece in the delimitation of the boundary; that the Governor General of Epirus and the authorities at Janina were aware of the appearance of bands of brigands in the neighborhood and had advised the Italian consul not to travel without escort, and that under these conditions it was astonishing, although General Tellini had not requested an escort, that the Government should not have insisted upon supplying one; that the Hellenic judicial inquiry had been conducted with all the dispatch made possible by the habitual working methods of the Greek authorities; that the car which had preceded the motor car containing General Tellini had been occupied by five Albanians, none of whom had been questioned by the Hellenic authorities; that the evidence of the barricade placed across the road was destroyed on the same evening by Greek soldiers; and that the Hellenic authorities had kept the news of the assassination until the following day from the Albanian delegation which preceded

General Tellini's car;[14] but that orders appear to have been given in good time by the Greek military authorities for strengthening the vigilance at the frontier posts. Also, that, on August 31st, an inhabitant of an Albanian village had warned the Albanian authorities that a band of thirteen brigands, of which the chief was of Greek origin, had come into his village and had admitted the crime; and that in the band were also two men of Greek origin, but all were Albanian subjects; that the Albanian authorities immediately dispatched *gendarmes* to the spot, but the brigands, with the exception of one named Cerea, escaped into Greek territory; that the Albanian Government did not advise the Greek authorities concerning these facts; nor did it inform the Inter-Allied Commission that Cerea was under arrest. The report of the Commission concluded as follows:[15]

"To arrive at this result [the truth] it is indispensable to ensure that complete understanding between the Albanian and Greek Governments. This understanding can only be realised under the energetic pressure of the Ambassadors' Conference. The Inter-Allied Commission, therefore, earnestly requests the Conference to intervene with both Governments in order that the inquiry should be continued in agreement with the judicial authorities of both countries. And in order to assure that agreement, the Commission suggests that at least one neutral person, an expert in criminal investigation, should be placed at the disposal of the two Governments, Greek and Albanian.

The Italian delegate requested that the following declaration be inserted at the end of the above report:

"The Italian delegate while associating himself with the general lines of the present report, does so under the reservation of sending to the Conference of Ambassadors a special report about the circumstances which enable him to establish at once the grave responsibility of Greece, and to give indications which may lead to the discovery of the culprits."

The fourth and last scene of Act III took place in Paris, but it did not wait for the conclusion of the third scene in Janina. While the Commission was still at work and before its supplemental report, dated September 27th, was received, the Conference announced the final terms of settlement in a note to the Greek Government, dated September 26th, reading as follows:[16]

[14] The British member of the Commission observed that the delay may have been due to the fear that the inhabitants of the Albanian villages near the frontier in which accomplices may have been concealed would take steps to protect the assassins.

[15] *Manchester Guardian Weekly*, December 18th, 1923.

[16] *Ibid.;* September 28th, 1923.

"The Conference of Ambassadors, taking note of the execution by Greece of the reparations demanded in paragraphs 1, 2, 3, and 4 of the Note of September 8, under the conditions enunciated in the Conference's subsequent Note of September 13;

"Having considered the report of September 21 furnished it by the Commission of Control which was despatched to Janina;

"Having, in conformity with paragraph 5 of the Note of September 13, examined this report from the point of view of the execution of paragraph 5 of the Note of September 8;

"Having regard to the fact that at the date of the said report the culprits had not yet been discovered, that, moreover, several instances of neglect have been brought home to the Greek authorities in the conduct of the inquiry, and that in the search for the culprits, instances of neglect have also been established, and being of the opinion, therefore, that the fifth condition of the Note of September 8 has not been fulfilled,

"Decides that as a penalty under this head the Greek Government shall pay to the Italian Government a sum of 50 million Italian lire.

"Whereas, moreover, the Conference and the Italian Government waive their right of recourse to the Court of International Justice of The Hague provided for by paragraph 7 of the Note of September 8, and also their right to any other penalty, and considering this matter to be settled, as far as they are concerned, under the reservation that Italy may have recourse to the Court of International Justice in connection with the expenses of occupation, the Conference decides that the payment of the sum of 50 millions of Italian lire aforesaid shall be effected by the remittance to the Italian Government of the sum of 50 millions of Italian lire deposited on September 10 with the Swiss National Bank.

"Consequently, the Permanent Court of International Justice will be requested to order that the said sum shall be transferred by the Swiss National Bank to the Bank of Italy at Rome and placed to the credit of the Italian Government.

"The Conference hereby takes note that the Italian Government declare that it will carry out on September 27 its decision already taken to evacuate Corfu on this date."

The following account of what occurred has been given by a correspondent:[17]

"I am given the following explanation of what took place behind the scenes, by one who is in a position to know. The Italian Ambassador, I am told, threatened to continue the occupation of Corfu unless the fifty million lire were handed over, and the Ambassadors took the realist line, it being more important on this realist basis to placate a big Power than to do justice.

"The Italian Ambassador backed up his demand by a technical argument which came as a surprise to the Conference. The Ambassadors' Note of September 14th referred to the fact that 'the Italian Government has announced its decision to evacuate Corfu *in any circumstances*

[17] *Manchester Guardian Weekly,* September 28th, 1923.

by September 27th.' The words italicized were regarded universally as explicit, and the text was never challenged by the Italian Ambassador.

"I am told that on Wednesday the Italian Ambassador pointed out that on September 13th he stated to the Ambassadors that Italy would evacuate Corfu by the 27th, unless in the meantime the Greek Government had been proved not to have been negligent. The point he made was that while the report of the Commission did not prove the Greeks to have been negligent, it did not prove that they had not been negligent. The whole sense of paragraph 5 of the Ambassadors' Note of September 14th was thereby knocked on the head. The report of the Commission of Inquiry was put into the waste-paper basket, and the Ambassadors did what Italy demanded."

Following this decision, a division of the Italian fleet appeared in the Corfu harbor to remain until the indemnity awarded by the Conference was paid. On September 27th, 1923, the Greek Government, under protest, accepted this decision, and notified the Conference that orders had been forwarded to the Swiss bank, where the money was on deposit, to transfer the amount to Rome. The note concluded as follows:[18]

"It is not the intention of the Greek Government to attempt to evade in any way the execution of the decision of the Conference of Ambassadors, though wholly unjust, as it is viewed by them. * * * In the event of the Conference recognizing that the security of the world and the moral credit of the Great Powers, of which the Council of the Ambassadors is but the offspring, require that none of their decisions must remain open to challenge, they can easily find the means of preventing such an effect by admitting this protestation from the Greek Government and referring the decision issued to the investigation of the High International Court of Justice at The Hague."

On September 27th, the money was paid; Corfu was evacuated; and the third act in the drama concluded. The events in this consecutive and expeditious record of action taken by the Conference are, therefore, as follows: The Conference was notified of the murders on August 27th, 1923, and immediately called a meeting; August 31st, it ordered Greece to make an inquiry, and reserved the right to decide the reparations to be made to Italy; August 31st, it received news of the occupation of Corfu; September 1st, its jurisdiction was accepted by Greece; September 5th, the Conference intimated that Greece would be held responsible and notified the Greek Government that progress was being made toward a settlement; September 8th, it announced the terms of the settlement; September 9th, it announced that Greece and Italy had accepted the terms; September 13th, it published the details of the manner in which the terms were to be executed (these being accepted

[18] *Manchester Guardian Weekly*, October 5th, 1923.

and executed by Greece); September 17th, the Inter-Allied Commission began an inquiry at Janina; September 21st, the Commission made a preliminary report; September 26th, the Conference announced its decision, ordering Greece to pay the full indemnity; September 27th, a supplemental report from the Commission was received; the promise of Greece to pay was made; and Corfu was evacuated. As a record of the expedition with which a dispute can be settled by the Allied Powers, the above presents a noteworthy example.

It will be observed that the dispute was settled on Italian terms. Italy demanded an apology from Greece and received it; as did also the Allied Powers, on the theory of a wrong done to the Conference; Italy demanded that honors be paid to the murdered men in a prescribed way, and it was so ordered and executed. Italy demanded a salute to its naval division, and it was given; also to warships of the other Allied Powers. Italy demanded that the inquiry be conducted in the presence of Colonel Perrone, and it was conducted in the presence of an Italian member of the Commission of Inquiry. Italy demanded that Greece pay an indemnity of fifty million lire within five days and received it within twenty-seven days; Italy demanded that the culprits be condemned to death, which the Conference changed to exemplary punishment, which in practice means much the same thing.

These terms were met without the assassins having been apprehended; without the responsibility of the Greek Government having been proved, and before the Commission of Inquiry completed its report. A new principle of international law was required, formulated by the Conference, to justify these conclusions. But even stranger is the fact that Great Britain and France were willing to accept a public apology in the matter of salutes to their warships for a crime established in fact; but not proved in law against Greece.

ACT IV—THE COUNCIL OF THE LEAGUE OF NATIONS

The fourth act in the drama took place in Geneva, contemporaneously with Act III. It consisted of two scenes—one enacted in the Council Chamber and the other in the Assembly Hall. The first scene opened in Geneva on the morning of September 1st, when the Secretary-General transmitted to the Council a note of that date received from the Greek representative.[19] It read as follows:[20]

[19] *Official Journal*, November, 1923; p. 1412.

[20] It will be observed that the Greek Government asked for the intervention of the League upon the same day that it communicated with the Conference accepting its jurisdiction and making proposals. (See p. 201; also *Official Journal*, November, 1923; p. 1289.)

"A deplorable event has just taken place on Greek territory. It has caused consternation throughout the whole country and raised a feeling of violent and unanimous indignation amongst the Greek people. The Italian delegation on the Commission set up by the Conference of Ambassadors for the delimitation of the southern frontier of Albania has been assassinated by unknown persons a few kilometers from the Greco-Albanian frontier.

"The moment it learned of this regrettable event, the Greek Government took energetic steps to discover the author of the crime, and spontaneously expressed to the Italian Government the profound regrets of the whole country.

"However, before any kind of proof was forthcoming as to the nationality of the aggressors or the motives and circumstances of the crime, the Italian Government, through its Legation at Athens, addressed to the Greek Government a note, a summary of which you will find attached (Appendix I), in which it threw the moral responsibility for the crime upon the Greek Government and demanded certain measures of satisfaction and reparation which are incompatible in several respects with the sovereignty of the Hellenic State and the honour of the nation.

"The Greek Government replied by a note, summarised in Appendix II attached, in which it refutes the accusation contained in the Italian note and states that it is quite unable to meet the demands which the note contains. Animated, however, by a keen desire to close, as soon as possible, and in the general interest, an incident which might seriously affect the good relations between the two countries, the Greek Government has offered to give to Italy the satisfaction and the reparations which are enumerated in the Greek reply.

"By this step, which will be recognised to be extremely conciliatory, the Greek Government is making the maximum sacrifices which are compatible with the honour and the sovereignty of Greece. Accordingly, in forwarding its reply to the Italian Legation at Athens, the Greek Government informed the latter that it had decided to place the dispute before the Council of the League of Nations with a view to arriving at a friendly and equitable settlement.

"In acquainting you with these facts, I have the honour, by the order of the Greek Government, to beg you to bring this question before the Council at the earliest possible moment, by virtue of Articles 12 and 15 of the Covenant of the League of Nations."

It will be observed: (1) That the Greek Government made its appeal under Articles 12 and 15 and requested that the Council make an inquiry and endeavor to effect a settlement. (2) That the question submitted was the Italian demand for reparations and the dispute arising therefrom. (3) That no mention was made of the invasion of Corfu; there was no allegation that Greece considered it to be an act of war; and Greece did not treat it as such and made no request that

Article 16 be applied.[21] (4) This was true notwithstanding that the note was despatched to the League after Corfu had been bombarded.[22]

THE STRUGGLE FOR COMPETENCE

The question was taken up by the Council at a public meeting, held on September 1st, 1923; but consideration of it was postponed until the afternoon in order to permit the members to familiarize themselves with the documents. Two other meetings were held in private on the same day, at the last of which M. Politis (Greece) sought to obtain a discussion of the invasion of Corfu, which subject was not referred to in the Greek note. He said:[23]

"The Greek Government thought that it had the right and the duty to resort to Article 15 of the Covenant to bring the matter before the Council, and as acts of violence were committed only a few hours after notification was given to the Greek Government, and after the latter had expressed the desire to bring the matter before the League of Nations, it may be asked whether this was not the case contemplated by Article 16 of the Covenant. * * * * * The Greek Government was accordingly inclined to profit by the doubt which might exist, as to the character of the acts committed by the Italian Government in order not to take the initiative in asking for the application of Article 16."

To which statement Signor Salandra (Italy) replied:[24]

"Article 16 cannot be applied to Italy. As appears from the official declaration of the Italian Government, Italy did not intend to commit an act of war. No Power under these circumstances would tolerate the application of Article 16. I accordingly invite the representative of Greece not to mention that Article but to confine himself to the other articles of the Covenant."

It, therefore, is clear that Article 16 was at no time involved, as the Council could not undertake its application without declaring Italy to be

[21] Sir Frederick Pollock says on this point:

"Reprisals, pacific blockades and other like measures of constraint applied to states and denying or delaying justice are doubtless in the nature of acts of war, but they do not create a state of war unless the state against whom they are exercised elects to treat them as definitely hostile. A strong modern example is the interference of several Powers, including Great Britain, in Crete in 1897 and 1898. We proclaimed a blockade; we assumed jurisdiction in Turkish territory; and, if I mistake not, we hanged some Turkish officials; we fired on both Turks and insurgents; we forbade the landing of Turkish reinforcements. But the Sultan did not think fit to declare war and diplomatic relations with Turkey were never broken. If Signor Mussolini cared for technical precedents, this would be more than enough for him." (Letter to London *Times,* October 9th, 1923.)

[22] *Official Journal;* November, 1923; p. 1289; statement by M. Politis.

[23] *Ibid.;* p. 1277. [24] *Ibid.;* p. 1278.

guilty of an act which it denied and which Greece did not allege; also, no state was willing to ask for the application of Article 16 under such circumstances. The Council could not, therefore, properly consider its application.

The question of the invasion of Corfu being ignored by Greece in its note to the League, and any consideration of it under Articles 10 or 16 being opposed by Italy, the Council sought to take up the Greek complaint regarding reparations to be made to Italy. The contest for competence began with the fourth session, when Signor Salandra stated that he had no instructions from his Government; that the Conference of Ambassadors was dealing with the question, and was competent, and that the Council should await its decision. In the sixth meeting, this opposition was continued when Signor Salandra referred to certain precedents which, he said, showed that "the Council of the League had always refrained from taking action in cases which are before the Conference of Ambassadors, which is the organ of the Supreme Council and which has been entrusted with the execution of the treaties.[25] To this statement, Viscount Cecil replied as follows:[26]

"I think the precedents are against that course. The only precedent that occurs to me is that of the dispute between the Kingdom of the Serbs, Croats and Slovenes and Albania. In that case there was, to some extent, a similar position, namely: a dispute arising out of boundaries which were being considered by the Conference of Ambassadors. It led to acts of violence, and the matter was brought before this Council and was disposed of by this Council without any doubt on its part that it had jurisdiction to do so."[27] * * * * *

"Therefore, in spite of the great respect I should always wish to pay to any words spoken by the distinguished representative of Italy, I do not

[25] *Official Journal,* November, 1923; p. 1279.

[26] *Ibid.;* p. 1279-1280.

[27] The Council on June 25th, 1921, passed a resolution in the above-named dispute containing these words:

"The Council of the League of Nations is informed that the Conference of Ambassadors has taken up the Albanian question and that it is discussing it at the present moment. In these circumstances the Council of the League of Nations considers it inadvisable to take up the question simultaneously." (See p. 186.)

M. Bourgeois, in his book entitled *"L'oeuvre de la Société des Nations"* (pp. 431-432), comments as follows upon this question of precedents:

"Since the League of Nations is merely an organization emanating from the Governments, it has never consented to deal with a question previously examined by any other governmental organization, such as the Conference of Ambassadors, or in process of settlement by diplomacy.

"For that reason it declined to consider the question of the frontiers between Poland and Lithuania and between Serbia and Albania, the status of Eastern Galicia, etc."

at present see any ground whatever on which this Council, without entirely forfeiting its right to the confidence of the world and entirely evading its position as created by the Covenant, can refuse to entertain the appeal brought to it by the Government of Greece."

On the issue thus presented, whether the Council could take action on a matter under consideration by the Conference, Viscount Cecil was supported by M. Branting (Sweden); but Signor Salandra was supported by M. Hanotaux (France), and a unanimous vote was impossible. At the eighth session of the Council, the question of public meetings was discussed. Up to that time some of the sessions had been private and others public; other sessions had begun privately and ended publicly. As a result, erroneous impressions and misleading reports were emanating from ill-informed correspondents. The Council, therefore, decided to continue its sessions in public.[28] At the eighth session, on September 4th, M. Politis (Greece) submitted the following proposals:[29]

"(1) That the Council should appoint one or more neutral representatives:

"(a) To superintend in Greece the judicial enquiry already begun by the Greek authorities and also the trial of those responsible for the murder of the Italian officers;

"(b) To assist in the work of the Commission, the appointment of which has been proposed by the Greek Government at the Conference of Ambassadors, in order to carry out both in Albania and in Greece an enquiry to establish the circumstances which preceded and accompanied the crime.

"(2) That the Council should instruct a Commission composed of three high judicial authorities—a Greek, an Italian and a neutral (for example, the President of the Swiss Federal Tribunal or the President of the Permanent Court of International Justice)—to meet as soon as possible in Geneva to settle the amount of the indemnities which it is just that Greece should pay to the families of the victims.

"(3) That the Council should agree that the Greek Government should forthwith deposit at a bank in Switzerland 50 million Italian lire as guarantee of the immediate payment of whatever indemnities may be decided upon."

Signor Salandra objected to the consideration of these proposals until he had time to examine them. At the ninth meeting of the Council, held on September 5th, an attempt was made to consider these proposals,

[28] This decision was not adhered to, and the policy above described continued, with the result that persons attending the public sessions considered themselves informed and competent to render an opinion upon the proceedings, whereas the vital considerations of policy and the facts upon which the public discussions were based were discussed at private meetings.

[29] *Official Journal*, November, 1923; p. 1286.

but Signor Salandra had received his instructions, which were to the effect that the crime was recognized by Italy as one against the Conference of Ambassadors as well as Italy, and that the effect of the crime (the occupation of Corfu) should not be adjudged separately from its cause; therefore, until the Conference rendered its decision, Italy must oppose any action by the League, as being out of place and incompetent. Signor Salandra stated the Italian viewpoint as follows:[30]

"The League of Nations has only the right to intervene in questions relating to the execution of the treaties if all the interested parties ask for such intervention. It has always been recognised hitherto that the League, which was created by these treaties, has no competence as regards the treaties themselves except under special provisions or subject to an agreement of the parties. It was for this reason that the Conference of Ambassadors was constituted, and it is for this reason that Greece has endeavoured to isolate the fact which was incidental to the execution of the treaties and of their sanctions in order to escape the consequences of the true nature of this fact. * * * There is no danger of war. There is not even a suspension of diplomatic relations. Where can a sufficient reason be found for the application of Articles 12 and 15 of the Covenant which are founded on the supposition of a danger of war?"

To this contention, M. Politis replied:[31]

"It is not necessary, as the Italian note states, that the two parties should agree to demand the intervention of the League of Nations. In the present case, Greece has exercised a right and, as I have already had the honour to point out, has fulfilled an obligation, for Articles 12 and 15 not only establish the right to submit a dispute to the League of Nations, but they create an obligation for the Members of the League to appeal to it and not to commit acts of violence calculated to disturb international peace. * * *

"I shall content myself with the observation that, were such an argument to be admitted, it would be the final ruin of the League of Nations, for it would always be open to a nation to assert for some reason or other that the Covenant did not apply. The League would cease to be what it was certainly intended to be, an organisation able to intervene, even on its own initiative, to ensure the maintenance of peace, but a kind of political arbitration which would only be made use of when both parties agreed to this procedure."

These opposing viewpoints created a deadlock and the Council adjourned to consider this further aspect of the situation; but not before Viscount Cecil had read into the record Articles 10, 12 and 15, whereupon he said:[32]

"These articles are to be found not only in the Treaty of Versailles but also in the Treaties of St. Germain, Neuilly and Trianon, and if these

[30] *Official Journal,* November, 1923; p. 1288.
[31] *Ibid.; November,* 1923; p. 1290.
[32] *Ibid.*

treaties are to be disregarded, the whole settlement of new Europe will be shaken."

THE RECOMMENDATIONS OF THE COUNCIL

When the Council met for its tenth meeting, it had before it a copy of the note sent to the Greek Government by the Conference on September 5th.[33] This communication formally notified the Council that Greece had accepted the jurisdiction of the Conference and that body was proceeding with the settlement of the question. The Council then relinquished its struggle for control and took the position of an advisory body, although not requested to do so by the Conference. In reply to the communication from the Conference, it proposed to make the following recommendations:[34]

"The Council further desires to submit to the Conference for consideration the following suggestions as to the possible means of giving satisfaction to the demands of the Conference for reparations from Greece in consequence of the attack made at Janina on Greek territory against the Chairman and Italian members of its Commission:

"(1) The presentation of apologies by the highest Greek authorities to the Ministers of the three Powers represented on the Delimitation Commission.

"(2) The celebration of a funeral service at Athens in honour of the victims, in the presence of all the members of the Greek Government.

"(3) The giving of a salute by the Greek fleet in accordance with conditions to be determined later.

"(4) The rendering of military honours when the bodies of the victims are embarked at Prevesa.

"(5) The appointment by the Greek Government of a Commission of Enquiry to investigate on the spot the circumstances preceding and accompanying the crime; the supplementing of this Commission by representatives of the three Powers concerned, as mentioned in the telegram in question.

"(6) The appointment of representatives of the League of Nations to supervise in Greece the judicial enquiry already ordered by the Greek authorities and the trial of the guilty parties.

"(7) The immediate deposit by Greece in a Swiss bank of a sum of 50 million lire as security for the immediate payment of any indemnity which may be fixed.

"(8) The submission to the Permanent Court of International Justice, for decision under the rules of summary procedure, of the question of the indemnity to be paid by Greece."

To this proposed communication, Signor Salandra raised the following objections: (1) That the Council should not declare its inten-

[33] See p. 202 for text.

[34] *Official Journal*, November, 1923; p. 1295.

tion of investigating the question of international law in conjunction with the Conference, for that would imply a presumption or assertion of competence on its part; (2) that the proposed recommendations go to the substance of the dispute and interfere with the right of Italy and of the Conference to determine the matter of reparations. He, therefore, declined to support the proposal and abstained from voting. It was apparent that the proposals could not be transmitted as recommendations and a compromise was reached whereby the minutes of the meeting containing the discussion and proposals were to be sent to the Conference. To this proposal Signor Salandra agreed, although he desired to avoid any suggestion that he had altered his point of view as to the competence of the League. It was finally agreed that the first part of the proposal should be sent to the Conference and that the recommendations should go as part of the minutes of the meeting.

The receipt of these minutes was acknowledged by the Conference and received by the Council on September 9th, in a note, as follows:[35]

"The Conference of Ambassadors, having received the communication which the Council of the League of Nations was good enough to address to it on September 6th, 1923:—

"Noting the desire expressed by the Council to be kept informed of the deliberations of the Conference;

"Paying homage to the lofty spirit of justice as also to the desire to maintain good harmony between the nations which have inspired this communication;

"Animated by the same sentiments of justice and by the same desire for peace as the Council of the League of Nations;

"Having, after taking cognizance of the complete report of the sitting of the Council of the League of Nations of September 6, studied with the greatest care the opinions expressed by various members of the Council in the course of this sitting;

"Thanks the Council for having supplied it with important elements for appreciation, and has the honour to communicate to it the terms of the following note addressed today to the Greek Government." [36]

On the same date the Council replied to the Conference, and acknowledged the preceding communication, as follows:[37]

"The Council of the League of Nations has the honor to acknowledge the receipt of the courteous communication of the Conference of Ambassadors of September 7th. Sharing in the anxiety of the Conference to see the Greco-Italian difference settled as soon as possible, the Council is happy to note that the documents communicated by it have been useful

[35] London *Times*, September 10th, 1923.
[36] See p. 202, for text of note to the Greek Government.
[37] London *Times*, September 11th, 1923.

to the Conference. The Council of the League of Nations thanks the Conference for having informed it of its deliberations on this affair, and hopes to be kept informed of the results of the decisions taken as well as of any subsequent deliberations on the subject."

This correspondence concludes Scene I of Act IV enacted in the Council Chamber, which events may be summarized as follows:[38] (1) September 1st, 1923, the Council received a request from Greece asking it to intervene under Articles 12 and 15 in its dispute with Italy; (2) the Council immediately held one public and two private meetings on the same day in which it sought unanimous consent to take jurisdiction; (3) the Council met on September 4th and received certain additional proposals from the Greek representative which it was prevented from adopting; (4) the Council met on September 5th and received suggestions from its Spanish representative; (5) on September 6th it transmitted these suggestions to the Conference of Ambassadors as part of the minutes of the meeting; (6) on September 9th it received an acknowledgment of these minutes; and on the same day thanked the Conference and was happy to note the usefulness of its suggestions.

THE FATE OF THE RECOMMENDATIONS

It will be recalled that the Conference, in acknowledging the receipt of the Minutes from the Council, stated that it had taken cognizance of the complete report of the sitting of the Council and had studied with the greatest care the opinions expressed by various members in the course of the sitting and thanked the Council "for having supplied it with important elements for appreciation."[39]

It is here necessary to note a singular omission from the Official Journal of the League containing the record of this dispute.[40] The

[38] It should not be inferred that the Council held no other meetings or that the Corfu affair was not the subject of bitter debate and many conferences. But this narrative is not a record of private conversations or verbal collisions; it presents only the record of *action* taken by the Council in the settlement of the Italo-Greek dispute.

[39] The only reference to this correspondence is contained in the *Monthly Summary* for October 15th, 1923, in the following item, seemingly a rather liberal interpretation of the text of the note from the Conference:

"The Council met again on September 10th to consider a telegram from the Conference of Ambassadors, dated September 7th, acknowledging the receipt of the verbatim record of the Council's session on September 6th, stating that it had examined, with the greatest care, the opinions advanced by various Members of the Council at that meeting and thanking the Council for having supplied it with valuable material, which had greatly assisted it in forming a judgment." (p. 213.)

[40] *Official Journal,* November, 1923.

decision of the Conference of September 8th, of which the Council was sent a copy, nowhere appears; although the note of September 13th from the Conference providing for the execution of the terms is given. The letter from the Conference acknowledging receipt of the Minutes, and from the Council thanking the Conference, are not reproduced. The omission of these three documents makes it impossible for the public, not having access to the original documents published at the time, to understand what became of the recommendations—made by the Council—whether they were accepted or rejected by the Conference. The omission enables adherents of the League to claim that its recommendations were accepted, with little likelihood of contradiction. It will be recalled that the Conference stated that it had taken cognizance of the report and that it had studied the "opinions" with care, but it makes no allusion to any proposals.

What weight, then, did the Conference attach to these "opinions"? The answer may be found in the following comparative statement of the three proposals which the Conference had before it and the decision made by that body:

Italian Note August 29th	Greek Reply August 30th[41]	Council of League September 6th	Conference of Ambassadors September 8th[42]
"An unreserved official apology to be offered to the Italian Government at the Royal Legation at Athens through the supreme Military Authority of Greece."	"It will express its unreserved regret to the Italian Government, in full official form, for which purpose the Officer Commanding the Military District of Athens will call upon the Italian Minister."	"The presentation of apologies by the highest Greek authorities to the Ministers of the three Powers represented on the Delimitation Commission."	Apologies shall be presented by the highest Greek military authority to the diplomatic representatives at Athens of the three Allied Powers whose delegates form part of the Delimitation Commission.
"A solemn memorial service for the victims of the massacre to be held in the Catholic Cathedral at Athens, and all the members of the Government to be present."	Accepts.	"The celebration of a funeral service at Athens in honour of the victims, in the presence of all the members of the Greek Government."	Same as Italian demand.

[41] Original text, p. 199. [42] Original text, p. 203.

Italian Note August 29th	Greek Reply August 30th	Council of League September 6th	Conference of Ambassadors September 8th
"Honours to be paid to the Italian flag, by the Greek Fleet in the port of Piraeus represented by a naval squadron which will visit the Piraeus for this special purpose; these honours to consist of a salute of 21 guns fired by the Greek warships, which will hoist the Italian flag while firing the salutes."	"On the same day, honours will be paid to the Italian Government in the following form: "A detachment from the garrison of Athens will parade before the Italian Legation and will salute the Italian flag with the usual honours."	"The giving of a salute by the Greek fleet in accordance with conditions to be determined later."	The Greek Fleet shall salute the Italian, British and French flags at the rate of 21 salutes per flag. After that the warships of the three Powers shall anchor before Phaleron. The salute shall be returned shot for shot by the Allied vessels, immediately after the funeral service, during which the flags of the Greek Fleet and of the warships of the Three Allied Powers shall be at half-mast.
"A drastic enquiry to be carried out by the Greek authorities at the place of the massacre in the presence of the Royal Italian Military Attaché, Colonel Perrone, for whose safety the Greek Government will be responsible; the enquiry to be carried out within five days of the acceptance of these demands."	Regrets inability to comply but accepts the services of Colonel Perrone with a view to helping the Commission of Inquiry by means of any information at his disposal that may lead to the conviction of the culprits.	"The appointment by the Greek Government of a Commission of Enquiry to investigate on the spot circumstances preceding and accompanying the crime; the supplementing of this Commission by representatives of the three Powers concerned as mentioned in the telegram in question."	A special Commission composed of delegates of France, of Great Britain, of Italy, of Japan, under the presidency of the Japanese delegate shall supervise the operation of examination and inquiry. It will submit its report and conclusions to the Ambassadors' Conference.

Italian Note August 29th	Greek Reply August 30th	Council of League September 6th	Conference of Ambassadors September 8th
"An indemnity of 50 million Italian lire to be paid within five days of the presentation of this note."	Regrets inability to comply but is willing to give the families of the victims an equitable amount of indemnity.	"The immediate deposit by Greece in a Swiss Bank of 50 million lire as security for the immediate payment of any indemnity which may be fixed. The submission to the Permanent Court of International Justice, for decision under the rules of summary procedure, of the question of the indemnity to be paid by Greece."	The Greek Government shall deposit * * * as a caution, in the Swiss National Bank, a sum of 50 million lire. (Amount of indemnity fixed by the Conference of Ambassadors; Note of September 26th.)
"Military honours to to be paid to the bodies of the victims at the moment when they are placed on board an Italian vessel at Prevesa."	Accepts.	"The rendering of military honours, when the bodies of the victims are embarked at Prevesa."	Same as Italian demand.
"Capital punishment for all the authors of the crime."	Regrets inability to comply.	"The appointment of representatives of the League of Nations to supervise in Greece the judicial enquiry already ordered by the Greek authorities and the trial of the guilty parties."	Exemplary punishment substituted; examination to be extended to Albanian territory.
			Evacuation of Corfu fixed for September 27th. (Note of September 13th.)

It will be observed that the Conference adopted the recommendation of the Council to include members of the Allied Powers in the apologies to be received from Greece, and welcomed the deposit of the fifty million lire; that it ignored the Council's recommendations that the Greek Government appoint an investigating committee to be supplemented by representatives of the Allied Powers and rejected the proposals that representatives of the League control the judicial inquiry; that the Permanent Court settle the indemnity due; and that the trial of the culprits be supervised by representatives of the League. As Italy, Greece and the Council were in agreement on the details of the funeral service and military honors to be paid to the victims, the Conference followed all three identical suggestions; while on the matter of salute, the Council reserved judgment; and the Conference followed its own inclination to include the Allied Powers whose representatives formed part of the Delimitation Commission.

SCENE II—THE ASSEMBLY

The second scene in the last act of this drama took place in the *Salle de la Reformation,* where the Assembly was holding its fourth annual meeting. Delegates from all parts of the world were assembled; the hall was filled with an imposing body of visitors. Corfu was upon everyone's mind and the word was heard everywhere. The atmosphere was tense with excitement and there existed unbounded confidence that "the League would do something." On September 3rd, the Assembly began its routine work with opening addresses, received the Secretary-General's report and adjourned with no mention of the Italo-Greek dispute or of Corfu. On September 4th, the Assembly met again, discussed routine matters and adjourned until September 6th. On the morning of Thursday, September 6th, however, the Assembly found its sessions postponed, for the Journal of the Assembly contained the following notice:

> "The Bureau of the Assembly met on Wednesday and, acting under the powers given to it by the Rules of Procedure of the Assembly, decided to postpone the meeting of the Assembly summoned for Thursday morning.
>
> "The Bureau hopes that the Committees will meet both in the morning and in the afternoon in order to get forward with the work."

It then became known that the Council alone, without consulting the Assembly, desired to deal with the dispute; that certain members of the Assembly were not satisfied with their total exclusion and desired the Assembly to take action, and in order to prevent any discussion or mobilization of public opinion through the Assembly, the Council had

advised that its sessions be suspended. From September 4th until September 10th, the Assembly hall was closed and the delegates met over dinner tables, in restaurants, or in knots upon the streets, to discuss a threat of war which fifty-two nations had engaged in solemn obligation to prevent; or these delegates filed solemnly into the Council Chamber to attend such sessions as were open to the public; or they approached Council members for the latest news of the settlement. So far as the Assembly was concerned, public opinion, which was to have been mobilized through its forum, was *demobilized* and the moral influence of the delegates followed the circuitous methods of the old diplomacy. Neither in speech nor action was the collective voice of that body ever heard.[43]

On September 8th, the Conference rendered its decision, and on September 10th, the Assembly resumed its sessions and considered an agenda which included the appointment of substitute delegates for Cuba and Czechoslovakia; the budget; the protection of women and children in the Near East; election of a judge for the Permanent Court of International Justice; the admission of Ireland; an expression of sympathy with Japan (for the earthquake); the "International Organization to Assist in the Relief of Peoples Overcome by Disaster"; and the Reconstruction of Austria.

On September 12th, the acting president of the Council addressed the Assembly as follows:[44]

"The dispute between Italy and Greece is still under examination by the Council; important negotiations are also in progress which, it is hoped, will lead to a satisfactory conclusion.

"I feel sure that in view of these facts Delegates to the Assembly will desire to refrain for the moment from any discussion of this important matter."

The Assembly acquiesced in this viewpoint and continued its routine work. On September 21st, another reference was made to the matter, when the acting president of the Council addressed the Assembly, as follows:[45]

[43] It has been said in the United States that this suspension was due to the various commissions being behind in their work for the Assembly and that it adjourned temporarily to enable them to catch up. No such reason was advanced during the tense days of the suspension, when it was openly acknowledged that if the Assembly were in session some of the delegates who were not in sympathy with the course followed by the Council might give vent to expressions which would cause Italy to withdraw from the League.

[44] *Verbatim Record of the Fourth Assembly,* Sixth Meeting; p. 5.

[45] *Ibid.;* Tenth Meeting; p. 3.

"I think it would be right, after the remarks which we have just heard, for me to say a few words in my capacity as President of the Council, concerning the decisions which the Council has taken. There is no need for me to say anything about the dispute between Italy and Greece, for that dispute has happily been terminated, and many members of the Assembly heard at the meeting of the Council last Monday a full statement on this subject, and had the satisfaction of hearing from the Council and from both the parties that the incident was definitely closed." * * *

Except for a few spasmodic remarks, expressing the hope that the League would grow stronger and more competent, the Italo-Greek drama was considered closed and the Assembly addressed its energies to its routine work.

The official record of the Assembly in the settlement of the dispute appears, therefore, to have been as follows: On September 3rd, the Assembly convened; on September 4th, it adjourned expecting to meet on September 6th; on September 6th, it found its sessions suspended; on September 10th, it found its sessions resumed; on September 12th, it acquiesced in a request from the Council to continue its silence; on September 21st, the acting president of the Council notified the Assembly that the dispute had been settled. In view of this record, the reader is entitled to request specifications—when asked to believe that the moral opinion of the world was mobilized in an Assembly of fifty-four nations and thus brought to bear upon the settlement of this dispute.

What, then, if anything, did the League contribute to the settlement of the dispute that can be legitimately claimed from the record of the Council and Assembly? (1) It gave Greece a hearing which it might not have obtained before the Conference. (2) It induced Greece to deposit fifty million lire in a Swiss bank, and the money being in hand, facilitated the evacuation of Corfu. (3) It suggested the inclusion of the Allied Powers in the excuses to be presented by Greece. (4) It made a sincere effort to stand up to the Conference of Ambassadors and might have succeeded had Great Britain held out. (5) It endeavored, within the terms of Article 15 of the Covenant, to settle the dispute. (6) It made a fair test of Article 15 of the Covenant and found it useless in a crisis involving a great power.

THE EPILOGUE

The decision of the Conference and the fulfillment of the terms by Greece and Italy ended the controversy, but it did not end the drama. The question of whether the League was competent to settle the Italo-Greek dispute remained; and the question of its competence in future

disputes loomed large. Signor Salandra had prevented all discussion of this important question by relying upon precedent and upon the respect and courtesy due the Conference.

SCENE I—THE COUNCIL

M. Branting was the first of the actors in the Italo-Greek drama to appear in the Epilogue, in an opening statement on September 17th, 1923:[46]

"The occupation of Corfu, in clear contravention of the principles laid down in the Covenant, might set up a dangerous precedent. Any act which conflicts with the solemn undertakings accepted by the various states will considerably diminish the League's prospects of fulfilling its great duties when confronted by future conflicts."

He was followed at the same meeting by Viscount Cecil, who, after reviewing the history of the dispute and the part taken by the Council, said:[47]

"Lastly, there remains the question of competence, which has been raised, and very formally raised, by the Italian Government, and which is undoubtedly, as Mr. Branting has truly pointed out, a very serious matter which to some of us, at any rate, seems to cut at the root of the authority and activities of the League in the future. I confess it does seem to me inconsistent with the respect we owe to the League itself and also, if I may say so, to the Italian Government (because it has raised this question formally and has asked for a formal discussion of it) to leave the matter quite as it is. * * * I venture to make an appeal to them to consider whether, and in what way, a satisfactory solution of this question may be arrived at; and, when I say a satisfactory solution, I mean a solution which will not infringe the national pride or the national interests of any member of the League but will leave unimpaired the prestige and the authority of the League itself, on which, as I think, the hopes of the world in very large part depend."

This appeal for a solution of the question of competence, Signor Salandra did not accept, on the ground that the Italo-Greek dispute was closed and no phase of it could be considered. He said:[48]

"Now that the incident has been settled in the first stage of its development by the Conference of Ambassadors, what becomes of the question of competence? In what way and on what ground could we raise it and deal with it? Even the least experienced jurist is aware that the question of competence can be discussed by no juridical, administrative or political authority unless that authority has before it a definite case and has to apply regal rules to an existing and specific controversy. Abstract and

[46] *Official Journal,* November, 1923; p. 1306. [47] *Ibid.;* p. 1309.
[48] *Ibid.;* p. 1315.

technical questions regarding competence are only considered in scientific works and discussed in law schools. Some of our number may be erudite jurists, but the Council and the Assembly of the League of Nations are high political organs whose principal task it is to prevent and allay international conflicts, and not, when once they are finally settled, to prolong them with no other object in view than to assert their own authority."

Signor Salandra, however, paved the way for an interpretation of abstract questions of competence and the following proposal, made by the President of the Council, was then adopted: [49]

"Certain questions of interpretation of various articles of the Covenant dealing with the powers of the Council and other questions of international law have received the particular attention of several of my colleagues.

"I think it necessary that these questions should be settled in order to avoid in the future any difference of opinion with regard to them and in order to facilitate the work of the League of Nations.

"For this reason, I think it my duty to propose to the Council that it should undertake, with the help of legal experts, a studied and thorough examination of these delicate problems and that it should consider without delay the methods best suited to attain this end."

At the session of the Council held on September 22nd, 1923, in accordance with Signor Salandra's suggestion for an examination of theoretical questions, Viscount Cecil made the following proposals: [50]

"I. The Council is of opinion that the subjects which require elucidation are the following:

"1. The interpretation of the first part of Article 12 and Article 15 of the Covenant with reference to the extent of the powers and duties of the League as to the investigation and consideration of disputes likely to lead to a rupture between Members of the League and the effecting of settlements of such disputes.

"2. The existence and nature of the right of one State to enforce demands made upon another State by measures of coercion, such as the occupation of territory or the like, and how far, if at all, the Covenant has modified any such rights as between Members of the League.

"3. The responsibility of a State with respect to certain crimes committed on its territory.

"II. The Council decides in principle that questions to elucidate these subjects should be submitted to the Permanent Court of International Justice and that jurists, to be named by the President of the Council, shall be asked to draft questions for the purpose."

To the proposal of the interpretation of Articles 12 and 15, Signor Salandra made no objection, but to that of the rights of states to enforce demands by means of coercion, he objected on the ground that it amounted to asking the question whether Italy was right or

[49] *Official Journal*, November, 1923; p. 1317. [50] *Ibid.*; p. 1320.

wrong, and he did not admit that anyone had the right to pass judgment on that question—that there could be no material consequences from the issue itself, but the moral consequences would imply censure or approval of Italy. To the third question as to the responsibility of states for crimes committed in their territory, Signor Salandra objected on the ground that the Court might be requested to hear a suit between Italy and Greece, and consideration of the question should, therefore, be postponed for fear of prejudicing the issue of a suit. Signor Salandra was, moreover, also opposed to referring the matter to the Permanent Court.

As the Council was unable to agree upon the form of the questions to be decided, the following resolution was adopted: [51]

"The Council instructs its President to communicate the Minutes of the meeting to a Committee of Jurists, composed of M. Adatci, M. Botella, Sir Cecil Hurst, or, in his absence, Lord Robert Cecil, M. de Lapradelle, M. Rolin, M. Scialoja, M. Unden and Dr. van Hamel, and to ask them, taking into consideration the views of the Council, to formulate in a definite manner the constitutional and legal questions which the Council desires to elucidate."

At a meeting of the Council held on September 26th, this Committee of Jurists submitted to the Council a draft of five questions. Before a decision could be reached, however, on their final form, a disagreement arose on who should answer these five questions. M. Branting observed that as the questions related to the interpretation of the Covenant, obviously they should be referred to the Permanent Court. He pointed out that in the labor cases the Court had passed on theoretical questions and there was considerable similarity between the instances; also that an authoritative opinion was necessary.

Signor Salandra objected to this proposal on the ground that the Court was a tribunal of justice and its members were magistrates who could pronounce only on questions of fact; and in this instance no case was involved; that the questions were both legal and political in character, and if referred to the Court gave to it a jurisdiction not provided for in its statute; also that no question dealing with amendments to the Covenant had been submitted to the Court, still less any question affecting the competence of the Council, and therefore to refer the matter to the Court was to deprive the Council of the right to interpret its own Covenant and the Assembly of the right of amendment. In the matter of an advisory opinion, Signor Salandra contended that no abstract questions, but only concrete cases had been submitted

[51] *Official Journal*, November, 1923; p. 1325.

to the Court, and the Council would be bound by such opinion, as it could not afford to find itself in conflict with the Court, which might be the case if that body exercised its rights.

Viscount Cecil stated it to be his opinion that the best way to deal with these questions was to send them to the Court for an advisory opinion; he had some doubts concerning certain questions being referred to the Court, but expressed his belief that, however jurists were obtained, "I am afraid one must recognize that, in the case of all arbitral or other bodies collected for a particular purpose, there is always a tendency to regard them as having been chosen because of the opinions they are likely to give. In other words, you do not get the same guarantee of absolute impartiality and disinterestedness that you do from a court which exists permanently and to which you submit certain questions." [52]

M. Hanotaux (France) agreed that the Court was clearly not an institution competent to settle constitutional questions and the word "question" in Article 14 of the Covenant could not relate to questions of a general character. While he agreed that certain of the questions might be submitted, he held that an opinion on other questions might constitute an amendment to the Covenant, and that was the right of the Assembly.

Viscount Ishii was of the opinion, when there was any doubt on the scope or legal meaning of an article, that Article 14 provided the Council with the means of finding a solution, and the Court was competent to give an opinion on any questions submitted and that the questions should go to the Court for an advisory opinion. He thought some of the questions were not worth sending to the Court, as they were so evident that it was unworthy of the Council not to pronounce on them immediately; but as they were to serve only as a sort of introduction to the others, he agreed to their submission to the Court.

As the result of these various points of view, endorsed in whole or in part by other members, the question arose of submitting certain questions to a Committee of Jurists and postponing others. The Council considered it a greater public danger to make no report to the Assembly than not to submit the questions to the Court.[53] It seemed to certain members that it would look rather ridiculous to divide the questions,

[52] *Official Journal,* November, 1923; p. 1338.

[53] The Assembly indicated its impatience at not receiving definite assurances concerning the future, when a number of its delegates on September 27th sent a letter to the Council asking when the Assembly might be informed as to the results arrived at by the Committee of Jurists. *(Official Journal,* November, 1923; p. 1339.)

sending one part to the Court and the other to a Committee, so Viscount Cecil proposed that all of the questions be referred to a Committee of Jurists to report at the next session of the Council; and if the Council could not reach an agreement on the acceptance of this report the points of difference should then be referred to the Court.

This proposal was opposed by Signor Salandra, who would not agree to any form of reference to the Court. Viscount Cecil then proposed the adoption of the following general resolution by the Council, as a provisional interpretation of Article 15: [54]

"The Members of the Council agree that any international dispute between Members of the League likely to lead to a rupture is within the sphere of action of the League * * * and that, if such dispute cannot be settled by diplomacy, arbitration or judicial settlement, it is the duty of the Council to deal with it under Article 15 of the Covenant."

The value of this resolution may be gauged by Viscount Cecil's argument for its adoption: [55]

"It would constitute a preliminary declaration, as it were, to the public. This would be the force of it: 'Do not be alarmed. The Members of the League still regard themselves as bound by the Covenant. If there has been any difference, it was only a question of a difference of opinion, which can be settled; but we do still regard ourselves as bound by the Covenant.' This is my object: to give satisfaction to the public mind."

To this resolution Signor Salandra was opposed on the ground that it either left the Council at the same point or implied that some members were lacking in fidelity to the Covenant, which he denied. On the theory, however, that the above resolution was a preface and that the five questions should go to a commission of jurists, he was prepared to accept the preface, provided a commission of jurists was appointed of which each member of the Council nominated a member; thus, the ideas of each Government would be represented. This being agreed to, the Council, on September 28th, passed the following resolution: [56]

"At its meeting of September 22nd, 1923, the Council asked a Committee of Jurists to formulate questions with regard to certain points concerning the interpretation of the Covenant, and other questions of international law, which the Council had had under consideration. The Committee submitted to the Council, on September 26th, the following questions:

"Question 1. Is the Council, when seized at the instance of a Member of the League of Nations, of a dispute submitted in accordance with the terms of Article 15 of the Covenant, by such a Member as 'likely to lead to a rupture' bound either at the request of the other party or on its

[54] *Official Journal,* November, 1923; p. 1346. [55] *Ibid.* [56] *Ibid.;* p. 1351.

own authority, and before inquiring into any point, to decide whether in fact such description is well-founded?

"Question 2. Is the Council, when seized of a dispute in accordance with Article 15, paragraph 1 of the Covenant, at the instance of a Member of the League of Nations bound, either at the request of a party, or on its own authority, to suspend its enquiry into the dispute, when, with the consent of the parties, the settlement of the dispute is being sought through some other channel?

"Question 3. Is an objection founded on Article 15, paragraph 8, of the Covenant the only objection based on the merits of the dispute on which the competence of the Council to make an enquiry can be challenged?

"Question 4. "Are measures of coercion which are not meant to constitute acts of war consistent with the terms of Articles 12 to 15 of the Covenant when they are taken by one Member of the League of Nations against another Member of the League without prior recourse to the procedure laid down in these articles?

"Question 5. In what circumstances and to what extent is the responsibility of a State involved by the commission of a political crime in its territory?

"The Members of the Council being agreed that any dispute between Members of the League likely to lead to a rupture is within the sphere of action of the League, and that if such dispute cannot be settled by diplomacy, arbitration or judicial settlement, it is the duty of the Council to deal with it under Article 15 of the Covenant:

The Council decides that these questions shall be referred to a Special Commission of Jurists for an opinion as to the answers to be given to them. The Council resolves that the Report of the Special Commission shall be submitted to it in time for consideration at its session in December. Each member of the Council may nominate within a period of 15 days a Jurist to be a Member of the Commission. The Members thus nominated, together with the Director of the Legal Section of the Secretariat, will constitute the Special Commission."

The Council decided to communicate this resolution at once to the Assembly. For the most part that body received the decision in silence or with expressions of confidence in the Council, but in the following statement Dr. Nansen expressed the insurgent view, which had been suppressed throughout the sessions of the Assembly: [57]

"We all believe that the Covenant of the League overrules any other supposed principle of international law that might be inconsistent with it. We have never had any doubt, and we have not now any doubt as to the competence of the Council in any international dispute which any one State, however weak, may submit to it. * * *

"There was the transfer of the whole settlement of this question from the League of Nations, an organised permanent and impartial association of which all interested States are Members, and which works in the full

[57] *Verbatim Records of the Fourth Assembly,* Eighteenth Meeting; p. 12.

light of publicity, to a temporary allied organization which comprises only a few States and works by the old method. This is a matter that I cannot but regret. That transfer was undoubtedly legally correct, but in my judgment, utterly undesirable. The time has come, it would seem to me, when the Great Powers should use the machinery which they have created at Geneva, and to which the small Powers have been invited, with so many promises, to give their adherence. * * * The final award of the Conference of Ambassadors of an indemnity of 50,000,000 lira against Greece seems utterly unjustified by any documents which have so far been published. It has been the understanding of world public opinion that the actual amount of the indemnity should be settled by the Permanent Court of International Justice, unless Greece failed in certain duties. No proof has been given to the world that Greece did so fail. Those are the broad lines of the problem. I could not reconcile my own conscience if I did not express them publicly." [58]

According to the resolution, each member state on the Council proposed a member of the Special Commission of Jurists. These, together with the Director of the Legal Section of the Secretariat, composed the Commission as follows: M. Adatci (Japan), Lord Buckmaster (Great Britain), M. Buerè (Uruguay), M. Fromageot (France), M. Rolandi-Ricci (Italy), M. Unden (Sweden), M. Villa Urrutia (Spain), M. Castello-Branco Clark (Brazil), M. Visscher (Belgium), and Dr. van Hamel (Director of the Legal Section of the Secretariat). This Commission was unable to report at the Council meeting held in December, 1923, as requested, but submitted its replies to the five questions at the meeting in March.[59] The Council received and approved its findings on March 13th, 1924.[60]

This closed the Epilogue, in which each of the principal actors had his say regarding the events and wherein Italy was victorious, for it had declared that it would not submit the dispute to the League and that it would not be tried for its failure to do so, and won on both counts.

SCENE II—THE PERMANENT COURT

Over the whole drama hung a constant shadow. It was always about to envelop the controversy and never quite succeeded. It was sometimes a visible reality and again a mirage. That shadow was the Permanent Court. Everywhere in Geneva the question was asked when it would enter the drama. For, to many, the question of the reparations

[58] At this point, the President of the Assembly interrupted Dr. Nansen, asking him to confine his statements to the declaration of the Council. Thereupon he discontinued his speech and left the platform.

[59] *Monthly Summary,* April, 1924; p. 53.

[60] Chapter I; p. 13, for text of first four answers interpreting the Covenant; and Chapter XXXIII, p. 368, for answer concerning international law.

Greece should pay Italy seemed to be an appropriate question for the Court. The Council believed it to be so; and the Conference apparently agreed, but the Court materialized, as follows:

Council, September 6th	Conference, September 8th	Conference, September 13th	Conference, September 26th
"The submission to the Permanent Court of International Justice, for decision under the rules of summary procedure, of the question of the indemnity to be paid by Greece."	"The Greek Government undertakes to pay to the Italian Government for the murder of its delegates an indemnity, the amount of which shall be determined in summary procedure by the Permanent Court of International Justice at The Hague, judged on the strength of the report of the Commission mentioned in Paragraph 6; this report shall be forwarded to the Court of Justice by the Conference of Ambassadors together with their observations."	"Such measures may consist in particular, in the payment to Italy of a sum of fifty million Italian lire, and in that case the Conference will request the Court of International Justice at The Hague to restore to Greece the security deposited by her, and no further application will be made to The Hague, as stated in Paragraph 7 of the Note of September 8th, unless any special application is made to the Court by Italy for charges entailed by the occupation."	"Consequently, the Permanent Court of International Justice will be requested to order that the said sum shall be transferred by the Swiss National Bank to the Bank of Italy at Rome and placed to the credit of the Italian Government."

It will be observed that the rôle reserved to the Court was that of honorable mention, except that it was to be requested to order the payment of an indemnity, in the determination of the justice of which order it had taken no part.[61]

The shadow again hovered over the scene when the Council discussed the questions of interpreting the Covenant, only to disappear in favor of a Special Commission of Jurists. But in this instance the damage done to the prestige of the Court by the League of Nations, unhampered by the traditions of the Conference and not threatened with war, was

[61] This reference was made necessary by the fact that Greece had deposited the guarantee "with instructions that the sum is to be remitted in whole or part to the Italian Government upon the decision of the Permanent Court at The Hague."

very real. For the principles set forth by members of the Council will endure. They may be epitomized as follows: [62]

SIGNOR SALANDRA: "To refer the questions under discussion to the Court would be to deprive the Council of its power. The power of amending the Covenant was vested in the sovereignty of the delegates of the states Members of the League. [63] * * * We could not refer to it [the Court] questions which * * * are of a constitutional nature, that is, questions which would result in an authentic interpretation of the Covenant. Such an interpretation is reserved to the sovereign power—I mean the Council or the Assembly. [64] * * * Theoretically, of course, we are entitled to have a different opinion from that [advisory opinion] of the Permanent Court, but in practice, after the latter had given its opinion, we should to some extent have lost our independence. [65]

"I recognize that the opinion of the Court would have great authority; it would even have so great an authority that it would be very difficult for us to have a different opinion, whereas the opinion of jurists might have only an advisory character." [66]

M. HANOTAUX: "The Permanent Court was clearly not the organization competent to settle constitutional questions, and the word 'question' used in Article 14 of the Covenant could not relate, in his opinion, to questions of a general character. It would obviously be preferable for constitutional questions to be dealt with by the Council itself." [67]

SIGNOR SALANDRA: "The question to be decided to-day is how far the Covenant has diminished the sovereignty of the States which accepted it. This is not only a legal but a political question, and no magistrates of the Permanent Court, and no Committee of Jurists, whatever its composition, would be capable of solving it. It can be solved only by the sovereign States which subscribe to the Covenant. For these reasons, I am unable to accept the reference of the third question to the Permanent Court of International Justice." [68]

VISCOUNT CECIL: "But insofar as there are political questions involved —I am not sure that there are—the opinion of the Court on them would be valueless. I should not think of paying the slightest attention to anything the Court said on political questions. It is not intended to decide political questions. We can say in the Minutes that, as far as the political aspect of the question is concerned, the Council remains the sole judge and will be unaffected by anything the Court may say, but that on the legal question it desires the advice of the Court." [69]

SIGNOR SALANDRA: "There is no absolute separation between legal and political questions. In this case, politics are intimately mingled with law, and I even believe that in these questions politics take precedence over law. [70]

[62] These statements unquestionably reflected the views of the Governments whose representatives made them. (See p. 51 for Assembly Resolution stating that representatives have no personal standing.)

[63] *Official Journal,* November, 1923; p. 1331.

[64] *Ibid.;* p. 1339.

[65] *Ibid.*

[66] *Ibid.;* p. 1342.

[67] *Ibid.;* p. 1332.

[68] *Ibid.;* p. 1340.

[69] *Ibid.;* p. 1342.

[70] *Ibid.;* p. 1343.

M. Mello-Franco (Brazil): "In the early stages of its existence, the Covenant must be applied in a spirit of great conciliation; we cannot have recourse to the rigid and vigorous methods which are employed in applying written constitutions."[71] * * *

From these various points of view the following principles with regard to the attitude of the Council toward the jurisdiction of the Court appear: (1) Political questions are not to be referred to the Court; the Council being the sole judge of what is political and what is legal; and in the event that the Court gives an opinion on a political issue it will be disregarded. (2) The interpretation of the Covenant is a political, not a legal, question, and is to be determined by the states represented in the Council.[72] (3) Whether the Council may interpret the Covenant for all other members remains to be determined. (4) The Permanent Court is not an organization competent to settle constitutional questions.[73]

COMMENTARY

The League of Nations faced the same kind of crisis in its history in 1923 that the Allied Powers faced in 1920. These Powers had a choice of two alternatives: (1) to enforce, by law and arms in a common policy, the Peace Treaties they had imposed upon Europe; or (2) to leave the matter to the individual states. They did neither; instead they created the League, a Conference and a Court, and gave to none of them authority because they were in disagreement as to objectives and methods and uncertain as to their own security. The result has

[71] *Official Journal,* November, 1923.

[72] This procedure is in direct opposition to the American Constitution, which is interpreted by the Supreme Court.

[73] A different interpretation from that set forth by Council members obtains in the United States. Mr. Manley O. Hudson, member of the League Secretariat, writes as follows in the New York *Times* of October 7th, 1923:

"It seems, therefore, that no question has been sent to the Permanent Court of International Justice either by Italy or Greece, or by the Powers represented in the Conference of Ambassadors. The Conference's decision of September 7th called for the Court's determination of the amount due to Italy. But this was modified by the decision of September 14th, which merely reserved to Italy the privilege of appealing to the Court with reference to the cost of the occupation of Corfu. Yet the existence of the Court has been an important factor in facilitating the settlement agreed upon. Fresh proof is thus given that even in the settlement of political disputes it is important to have at hand machinery for adjudicating the by-product of legal questions which almost every dispute involves. Perhaps it is in this way that its chief contribution to maintaining peace will be made by the Permanent Court of International Justice."

been that the Peace Treaties are observed in some instances and disregarded in others and command little respect.

The League had a choice of two alternatives: to follow the precedent established in the previous disputes of Albania, Eastern Galicia and the Greco-Turkish War and decline to deal with a question which the Conference or the Allied Powers had under consideration. In that event, public opinion would have appreciated the position of priority taken by the Conference and especially by the Allied Powers. This stand would have been dignified and straightforward and might well have rallied public support to the new diplomacy. Or the Council might have chosen a second alternative and insisted upon its rights under the Covenant either to take full jurisdiction, or no action at all. It did neither. Instead, it undertook to apply the Covenant and failed; and rather than face squarely the issue of failure, it approached the Conference and effected a compromise in which it appeared as the adviser of the Conference, making recommendations which that body did not accept. This compromise confused the values and obscured the true facts. It ended in a weak legal opinion being delivered on the Covenant; and in a repudiation of the Court. This course has sufficiently befogged the issue to enable the members of the Council to claim credit for moral influence and for mobilizing public opinion and to attach to its endeavors an importance wholly at variance with the facts.

The Italo-Greek drama rendered an international service in that it established beyond doubt the fact that the League possesses under its present form of organization and personnel precisely that measure of competence which the Principal Allied Powers accord to it; that any one of these Powers can bring its peace efforts to a standstill; or can make it a powerful agency for peace. To regard the Council as something apart from the nationalist policies of these Great Powers, which must necessarily place national security ahead of international peace, is to deny the contribution to truth which Italy made.

CHAPTER X

THE ADVENTURE OF FIUME

The peninsula of Istria and the coast of Dalmatia on the north and northeast of the Adriatic Sea were occupied in ancient times by Romans, and in mediæval times by Italian trading cities. The hinterland, however, was inhabited by Slavs, Croats and Slovenes to the north, and Bosnians to the east. Between the eastern coast of the peninsula of Istria, and the coast of Dalmatia, there is an inlet, the Gulf of Quarnero, and at the head of this gulf lies the city of Fiume. All these territories had been absorbed in Austria-Hungary, some by conquest, some by inheritance. Fiume itself was incorporated in the dominions of the house of Austria in the 15th century, declared a free port in the early 18th century, and joined to Hungary as an autonomous body in 1779. Hungary held the city intermittently till 1870 and continuously from that date till the end of the war. Port facilities and railroad connections were developed to serve the trade and emigration of the hinterland of Hungary, Croatia and Slavonia. The population of Fiume numbers about 40,000, of whom in the city of Fiume the majority are Italians, and in the suburb, Susak, the majority are Croats.

The Fiume controversy, after five years of negotiation and strife, is now settled. It has had a dramatic career. Because of it, the Italian delegation left the Peace Conference and President Wilson threatened to return to the United States. It estranged friends and might have disrupted the Peace Conference, had the parties not been left to take care of the dispute themselves. It appears to have been the only problem which completely baffled the Allied Powers. The course followed during the past five years in its settlement is anomalous. Although both parties to the dispute are members of the League, it has eluded the Covenant; although Italy is a member of the Conference of Ambassadors that body has not successfully intervened. Through a hazardous period, the Fiume dispute has taken its way to victory for Italy. The annexation has been celebrated by Italy; D'Annunzio, for his services, has been created the first Prince of Monte Nevoso; but in Yugo-Slavia the outcome still disturbs domestic peace.

FIUME BEFORE THE PEACE CONFERENCE

It appears that in the secret Treaty of London, signed April 26th, 1915, partitioning this section of Europe, Fiume was not apportioned

to Italy by the Allied Powers as were Trieste and the peninsula of Istria and all of Dalmatia.[1] It was, however, understood under this agreement, that Italy was to receive compensation if France and Great Britain extended their colonial possessions in Africa at the expense of Germany. The plan seems to have been that Fiume would be the port of a small and weak Croatia, made independent of Austria-Hungary. But when, after the armistice with Austria-Hungary, the Croats and Slovenes joined the Serbians in proclaiming the new Yugo-Slav State, it became clear that Italy was to have a strong neighbor, and that Italian sovereignty in the northern Adriatic was to be questioned.

The changes caused by the formation of Yugo-Slavia, and the objection raised by President Wilson at the Peace Conference, made the provisions of the secret Treaty of London practically inapplicable; thus the question before the Peace Conference was how this Treaty could be modified. Italy, however, not only insisted on the application of the secret treaty, but also extended its claim to Fiume. The situation was intensified by the question whether the Croats and Slovenes, who had been fighting Italy during the war, should be received as Allies at the Peace Conference. On January 18th, 1919, the Allied Powers, owing to Italian opposition, refused to recognize any delegates other than Serbians. President Wilson recognized the Yugo-Slav State on February 5th, 1919, and about the same time D'Annunzio made his first public demand for the annexation of Fiume and Dalmatia to Italy.

The antagonism continued, and on April 14th, 1919, President Wilson addressed a communication to the Italian delegation. In this communication he defined the "Wilson Line," which left Fiume an "island in a Yugo-Slav sea." He suggested that Fiume be made a free state within the customs regime of Yugo-Slavia, to devote itself to the service of the commerce of the new states. This line would have placed about 365,000 Yugo-Slavs under an Italian regime.

The Italian delegation was opposed to this suggestion and a deadlock resulted. The Yugo-Slavs complicated the situation by demanding a plebiscite. On April 20th, 1919, President Wilson withdrew from the Conference. On April 23rd, he issued a statement in which he announced that conditions had changed since the secret Treaty of London had been signed and that he could not accept it as a basis of settlement; but that he would not oppose a settlement on which the two countries agreed. On April 24th, Signor Orlando replied in the name of Italy, resenting President Wilson's appeal "to peoples outside

[1] For a detailed history of the question of Fiume see *A History of the Peace Conference of Paris,* Vol. IV; pp. 287-337.

of the governments which represented them," claiming that Fiume was necessary to Italian security. On the same date the Italian delegation left Paris, as a sign of protest; but on May 9th it returned and negotiations were continued. Signor Orlando was defeated by the Italian Parliament on May 19th, and Signor Nitti took his place at the head of the Italian delegation.

On May 30th, 1919, another adjustment, called the "Tardieu Compromise," was proposed. The important item in this project created a temporarily independent and demilitarized buffer state under the League of Nations, including the town of Fiume and a hinterland; also the St. Peter railway, having connections to Udine and Venice. The destiny of this area was to be finally decided by plebiscite at the end of fifteen years. The Italians were to relinquish Dalmatia, but in exchange were to receive a number of islands. The Italians accepted, but the Yugo-Slavs insisted that the plebiscite be held within three years and that their government should enjoy a position in Fiume similar to the Polish position in Danzig. This proposal was then abandoned and was the last of the series before the "Big Four" separated and returned to their respective countries, leaving the Supreme Council to grapple with the problem.

THE FIUME QUESTION AT HOME

While these questions were being discussed at Paris, events in Fiume were shaping to take part in the settlement of the dispute. After the armistice in November, 1918, Serbian troops occupied Fiume, but after some negotiations they withdrew and Italians under General Grazioli established themselves in the town, and were subsequently joined by other Allied troops. An Italian National Council was established and began propaganda and agitation for a plebiscite. General Grazioli disavowed responsibility; but in June the young Italians of Fiume began drilling a force which attacked and wrecked the Croat Club and came into conflict with the Allied troops. On July 8th, 1919, the Supreme Council decided to send a Commission of Generals to make an inquiry and they recommended: (1) A dissolution of the National Council and the election of a municipality under the control of the Allied Powers; (2) reduction of Italian forces; (3) substitution of an American or British personnel at the naval base; (4) nomination of a Commission by the Allied Powers to control the administration; and (5) maintenance of public order by an American or British police force.

These recommendations were adopted by the Supreme Council and

General Grazioli was instructed to resign. On September 12th, 1919, a British police force was to take over the city. On that day, however, D'Annunzio and the first of the Fascisti occupied Fiume, and he was proclaimed Dictator. The Allied troops and Italian regulars withdrew. The Italian troops surrounded Fiume and cut off further exploits in other areas by D'Annunzio. He was declared to be an outlaw and his acts were disavowed by the Italian Government, but he remained for more than a year, plentifully supplied with ammunition, arms and rations and continued his agitation with sword and pen for the annexation of Fiume.

THE QUESTION RETURNS TO PARIS

On December 9th, 1919, a Franco-British-American memorandum was presented to Italy which provided that Fiume, with a hinterland including 200,000 Slavs and 40,000 Italians, was to become a buffer state. It provided that "the determination of the whole future of the State shall be left to the League of Nations which, in conformity with Italian requirements, shall not fail to provide the full measure of autonomy which the City of Fiume enjoyed under Austro-Hungarian rule." [2]

Italy requested to be permitted to reply before this proposal was made public. On January 6th, 1920, the reply was submitted. Italy insisted on the fulfillment of the secret Treaty of London and suggested slight modifications in the December memorandum. The British and French Premiers then prepared the "January Compromise," which was based on the secret Treaty. According to this plan the buffer state was abolished, Fiume City was to be independent; Susak was to be ceded to Yugo-Slavia; and Italy was to have Istria.

It appears, however, that President Wilson had not been consulted about this arrangement, and raised objections when the matter was brought to his attention. On February 10th, 1920, he replied, in a memorandum setting forth his objections on the ground that Italian occupation of Istria brought it to the gates of Fiume and paved the way for the annexation of that port. In the memorandum, he stated: [3]

"The Adriatic issue as it now presents itself raises the fundamental question as to whether the American Government can on any terms cooperate with its European associates in the great work of maintaining the peace of the world by removing the primary causes of war. * * * But if substantial agreement to principle, if just and reasonable, is not to determine international issues; if the country possessing the most endur-

[2] *A History of the Peace Conference of Paris,* Vol. IV; p. 311.
[3] *Ibid.;* p. 323.

ance in pressing its demands rather than the country armed with a just cause is to gain the support of the Powers; if forcible seizure of coveted areas is to be permitted and condoned, and is to receive ultimate justification by creating a situation so difficult that decision favourable to the aggressor is deemed a practical necessity; if deliberately incited ambition is, under the name of national sentiment, to be rewarded at the expense of the small and the weak; if, in a word, the old order of things which brought so many evils on the world is still to prevail, then the time is not yet come when this Government can enter a concert of Powers, the very existence of which must depend upon a new spirit and a new order. The American people are willing to share in such high enterprise; but many among them are fearful lest they become entangled in international policies and committed to international obligations foreign alike to their ideals and their traditions. To commit them to such a policy as that embodied in the latest Adriatic proposals and to obligate them to maintain injustice as against the claims of justice would be to provide the most solid ground for such fears. This Government can undertake no such grave responsibility."

He thereupon indicated that in the event of the December 9th memorandum being superseded by the January 14th Compromise, he would take under consideration the withdrawal of the Treaty of Versailles then pending before the United States Senate, thus permitting the Associated Governments to establish independently and enforce separately their agreements in Europe.

This memorandum had the effect of dissolving the "January Compromise." On February 17th, 1920, a reply was sent to President Wilson intimating that the Allied Powers considered themselves bound by the secret Treaty of London and under that Treaty Italy had to abandon Fiume, and Yugo-Slavia would lose Dalmatia, which satisfied neither state. On February 25th, 1920, President Wilson replied that he would make no objection "to a settlement mutually agreeable to Italy and Yugo-Slavia, regarding their common frontier in the Fiume region, provided that such an agreement was not made on the basis of compensation elsewhere at the expense of nationals of a third power." Therefore, direct negotiations would fall within the scope of the principle of self-determination.

The Allied Powers accepted this suggestion and stated that they were ready to withdraw the proposals of December 9th, 1919, and of January 14th, 1920. President Wilson did not agree to withdraw the December 9th proposal, but stated, if Italy and Yugo-Slavia desired to withdraw the buffer state and to limit the free state to Fiume under the sovereignty of the League of Nations, then he would agree to leave

the determination of the frontier to them. He again refused to be a party to the coercion of the Yugo-Slavs by the Treaty of London.

In commenting upon this long negotiation, the editors of *A History of the Peace Conference of Paris* conclude: [4]

"With this utterance was ended the long controversy between the great Powers over Fiume. President Wilson had failed to convert Orlando, Nitti to convert D'Annunzio, the three Powers together had failed to convert Italy, Tardieu and Clemenceau had failed to convert the Yugo-Slavs. The President of the Conference and the President of the United States had failed to solve the problem, and the two principals were at last left to work out their own salvation, which they ultimately did without summoning the League of Nations to their aid."

THE TREATY OF RAPALLO

In pursuance of this understanding, at the San Remo Conference, in April, 1920, the three Allied Powers undertook to effect a settlement between Italy and Yugo-Slavia. Unfortunately, a political crisis in Italy ended in the downfall of Nitti, and anti-Italian demonstrations held in Yugo-Slavia over Fiume did not facilitate matters. Mr. Wilson was defeated in the Presidential election, the Yugo-Slavs lost their champion, and negotiations were broken off. The Italian and Yugo-Slav negotiators finally assembled at Santa Margherita on the 8th of November, 1920, and on the 10th announcement was made that the Adriatic question was settled. On November 12th, 1920, the Treaty of Rapallo was signed. It provided for a free State of Fiume under which "the Kingdom of Italy and the Kingdom of the Serbs, Croats and Slovenes recognize the full liberty and independence of the State of Fiume and pledge themselves to respect it in perpetuity." [5] It was also agreed under Article VI of the Treaty that a conference was to be called to place before the two governments proposals for establishing cordial economic and financial arrangements between the two countries. By this Treaty, Italy received Istria and much of the territory to the Italianization of which Mr. Wilson had objected; for it placed 467,000 Slavs under Italian rule. Italy also received the quicksilver mines of Idria and the control of the St. Peter railway to Fiume; also a strategic point at Monte Nevoso. The area of the Free State was extended to make it contiguous with Italy. On November 22nd, 1920, the Treaty was ratified by Yugo-Slavia, and on November 27th by Italy. On January 18th, 1921, after some resistance on the part of D'Annunzio,

[4] Vol. IV; p. 327.
[5] *A History of the Peace Conference of Paris,* Vol. V; p. 430.

regular Italian troops compelled his retirement, but his irregular troops, the Fascisti, remained in the suburbs of Fiume.[6]

THE ZANELLA REGIME

On April 24th, 1921, the people of Fiume were able to express their own free will. At the elections held on this date the Autonomous Party, under the leadership of Riccardo Zanella, obtained a strong majority over the Italian National Party. But this victory was short-lived. On the same day, the Fascisti, remainder of D'Annunzio's bands, infuriated by the result of the election, took possession of the City, destroyed the polls and forced the leaders of the Autonomous Party to flight. This took place under the eyes—and as the "Red Book" of Fiume states—with the assistance of the Royal Italian Carabinieri (the regular Italian troops), which had remained after ousting D'Annunzio.

The leaders of the Autonomous Party took refuge in Yugo-Slavia, at Buccari, and thence issued a proclamation on May 3rd, 1921, stating that they had established a provisional government and had appealed to France, England, Italy, Yugo-Slavia and the United States for their assistance to enforce the results of the election.

Conferences, held at Rome during the end of May, 1921, resulted in the despatch of Commandant Foschini as "High Commissioner of the Royal Italian Government at Fiume," to put an end to the disorder caused by the Fascisti. It seems that he did not succeed in stopping fighting, but Italian troops remained in charge of the City, and it was under Italian protection that the provisional government returned, and the Fiumian Constituent Assembly could meet on October 5th, 1921. But at the time that Zanella and the Constituent Assembly assumed control, the Italian Government seized the port and railways, thereby dealing a severe blow to the economic life of the unfortunate city. The Zanella Government continued to vegetate, but matters grew worse during the winter of 1921-22; collisions between Fascisti and Autonomists became more and more frequent until, finally, on March 3rd, 1922, the Fascisti organized a *coup* and forced Zanella to resign.

[6] It is of interest to note that, although the territory disposed of in the Treaty of Rapallo was the property of the Principal Allied Powers, they were not parties to the Treaty and appear not to have formally approved of it. It should be observed that Fiume was not taken from Hungary by the Allied Powers for the purpose of being given to Italy, but the Allied Powers made no objection to such disposal. On the contrary, Memel was taken from Germany expressly to be given to Lithuania, but was not transferred until Lithuanian irregulars captured it by force of arms (see p. 264); and the title to Danzig still vests in the Allied Powers. (See p. 134.)

A provisional government was established, composed of the leading members of the annexationists from the remainders of the Constituent Assembly, under Signor Depoli.[7]

THE ANNEXATION OF FIUME

Thus, the question of Fiume returned whence it had started in November, 1920. Negotiations were resumed at the Genoa Conference and an understanding reached in May, 1922, in the Convention of Santa Margherita, which, in its main points, confirmed the Treaty of Rapallo. The ratification of this agreement by the Italian Government was greatly delayed and only took place in the winter of 1923. In March, 1923, a joint Commission of Italians and Yugo-Slavs met at Abbazia and endeavored to grapple with the problem of tracing the boundaries. Yugo-Slavia, under the Treaty of Rapallo, claimed Port Baross,[8] with an adjoining territory in Fiume, as a port to handle the Croatian timber trade. Italy, now under the regime of Signor Mussolini, offered to cede Port Baross, if the Yugo-Slavs in return renounced all other rights under the Rapallo Treaty, including the right to arbitrate disputes.

Matters reached a critical stage in the fall of 1923. The Commission, having disagreed at Abbazia, continued the disagreement at Rome. The Italian Government made final proposals to the Yugo-Slav Government, and Signor Mussolini added that if these proposals were not accepted by August 31st, he would resume liberty of action. Yugo-Slavia succeeded in extending the time limit of this ultimatum to September 15th; and although no Yugo-Slav reply was received by that date, negotiations were not broken off. But on September 16th, 1923, Signor Depoli resigned from his office as Vice-President of the Constituent Assembly; and Signor Mussolini, apparently resuming "liberty of action," named General Giardino temporary Military Governor of Fiume.

The coincidence of this act with the Italian occupation of Corfu, caused grave apprehension throughout Europe, and public opinion began to inquire why the League of Nations did not take notice of the situation. About this time, ex-President Zanella, it seems, addressed a request for admission of the Free State of Fiume to the League of Nations. But the only notice the disputants took of this institution was to register with the League the Treaty of Rapallo and the Con-

[7] For account of the fall of the Zanella regime see *Libro Rosso* of the Government of Fiume; 1922.

[8] Port Baross is the timber-port of Fiume and lies between Fiume and Susak.

vention of Santa Margherita, on September 20th. Meanwhile, they resumed direct negotiations, with a view to modifying these agreements.

The outcome of these last negotiations was an agreement, signed on January 25th, 1924, at Rome, according to which Italy annexed Fiume, while Port Baross and Susak were allotted to Yugo-Slavia. Fiume harbor was leased to Yugo-Slavia for a period of fifty years, for the annual rental of one lire of gold and Yugo-Slavia is to supervise the harbor administration. The Yugo-Slav minorities in Fiume are to receive the same protection as the Italian minorities in Dalmatia. Although the Treaty was opposed by the Croats, it was ratified by the Yugo-Slav Parliament in February, 1924. On March 1st the provisional government of Fiume came to an end and General Giardino was installed as Military Governor of the new Italian province of Carnaro, of which Fiume is the capital.

COMMENTARY

The question of Fiume was not submitted to the League for the following principal reasons: (1) The process of settlement was always in a state of combined negotiation and warfare which permitted the evasion of Article 13 on the ground that diplomatic negotiations were in process; [9] (2) the opposition of Italy prevented its consideration under Article 15; (3) the experience of the Peace Conference, which was nearly wrecked by the question, did not encourage the desire of the League to settle the question; (4) no member state was willing to submit a dispute in which one of the Allied Powers was engaged, when that Power did not choose to submit it, and thus run the risk of being accused of committing an unfriendly act. The dispute illustrates the complete triumph of nationalism over internationalism and indicates how thin is the latter veneer over the striving for security, for to this question, in successive negotiations, had been addressed the minds of the executives of the great nations.

In the settlement of the Fiume Question Italy was the first Allied Power to establish the principle that a nation is not responsible for the acts of its nationals in the aggression of territory, if it disavows their acts; but that it may profit by that aggression and reward the perpetrator, provided he be successful over the aggressed nation.[10] There

[9] In a state of alternate warfare and negotiation or of continued warfare and negotiation, it appears that negotiation is the primary factor and will estop the application of the Covenant.

[10] This principle was adopted in Vilna by the Poles in October, 1920; by the Hungarians in the Burgenland in 1921, and by the Lithuanians in Memel in 1923.

seems to be no certain legal procedure for the eviction of a group of nationals who take possession of foreign territory when the state disavows the act: or of dealing with a state which assists such nationals while disavowing their acts. It seems to constitute a situation for which the Covenant makes no specific provision.

The settlement demonstrated that the use of force as a method of acquiring territory has lost nothing of the efficacy which it possessed before the war; and that the Covenant is a fragile instrument when called upon to provide measures of national security against a great power.

CHAPTER XI

POLISH INVASION OF VILNA

Lithuania is situated on the southeastern shore of the Baltic Sea, south of Latvia, east and north of Poland and north of East Prussia. The total number of Lithuanians is about 4,000,000. They are of an ancient race, with a language and traditions completely distinct from the Slav. The independent Kingdom of Lithuania, which flourished in the 13th and 14th centuries, gradually united with Poland through intermarriages of sovereigns, and by conventions, and after the downfall of Poland, was annexed by Russia. In 1915 the country was occupied by German armies, but was permitted to elect a State Council. This was established at the old capital of Lithuania, Vilna, and, in February, 1918, this Council proclaimed the independence of Lithuania. In January, 1919, Bolshevik troops invaded the eastern part of the country, occupying Vilna; and in April, when the Lithuanians were closing in to recapture the city, they were forestalled by Polish troops. To prevent fighting between the Poles and Lithuanians the Supreme Command of the Allied Powers laid down a line of demarkation, allowing the Poles to keep Vilna. Soviet and Polish forces then waged war on Lithuanian territory. In July, 1920, the Polish forces were beaten and in their retreat evacuated Vilna. The Lithuanian and Soviet Governments then concluded a treaty at Moscow, by which a boundary was established and Vilna was returned to Lithuania.

This small country, unknown to most Americans, has begun and still maintains a remarkable contest for justice. Its persistence has made available an invaluable record concerning the principles applied to the settlement of disputes in Europe.

THE INITIAL DISPUTE

On September 5th, 1920, a telegram was sent from Warsaw *via* the Polish *chargé d'affaires* in London to the League of Nations asking for intervention by the League.[1] The telegram stated, that after the retreat of the Polish armies from Lithuanian territory in July, 1920, the Lithuanian Government concluded an agreement with the Russian Soviet Government, by which the Lithuanian Government authorized the latter to avail itself of Lithuanian territory for the passage of troops and for the establishment of a military base. Poland alleged that this

[1] *Official Journal, Special Supplement No.* 4; *p.* 44.

agreement violated the principles of neutrality in the war between Poland and the Soviet. It stated that in their retreat the Polish armies had evacuated Suwalki and Augustowo, which had been recognized by a decision of the Supreme Council on December 8th, 1919, as belonging to Poland. This territory had then been occupied by Lithuanian troops. Later, when the Polish troops recovered part of the territory, the Lithuanian Government notified the Polish Government that it did not recognize the boundary as fixed by the Supreme Council, and demanded the retirement of the Polish troops. The Polish Government declined; and on September 2nd, 1920, there was an engagement between Polish and Lithuanian troops in which several men were killed.

After this encounter, alleged the complaint, the Lithuanian troops had attacked Suwalki and Augustowo, in which Soviet troops were assisting the Lithuanian army. The Polish Government, therefore, requested the League to intervene and put an end to further bloodshed and declared that the Government would consider that a state of war existed, if within a few days' time the Lithuanian troops had not been withdrawn beyond the boundary established by the Supreme Council; and if they had not ceased to co-operate with the Bolshevik army. The Polish Government requested the League to use all means at its disposal to restrain the Lithuanian Government and stated that, in view of the danger of concentration of Bolshevik troops, the Polish Government considered itself free to carry on military operations in Lithuanian territory wherever there were armed Bolsheviks.

On September 6th, 1920, the Lithuanian Government replied to this request for intervention by the League,[2] declining to withdraw its troops from the territory they held, on the ground that the ceding of this territory to the Polish Government would be a breach of neutrality toward Russia; that the territory was Lithuanian; and that the decision of the Supreme Council was not binding upon Lithuania, as that body had fixed the boundaries without the knowledge or consent of the country. The Lithuanian Government pointed out that on August 27th, 1920, it had proposed to the Polish Government to fix a demarkation line but, without replying to this note, Polish troops had attacked Lithuanian troops and penetrated into the territory then held by Lithuania. The note contained the proposal that an immediate conference take place between the two countries to fix a demarkation line.

This dispute was placed upon the agenda of the Council for September 16th, 1920. Lithuania appointed Professor Valdemar as its repre-

[2] *Official Journal, Special Supplement No.* 4; *p.* 47.

sentative; Poland appointed M. Paderewski, and they were invited to sit with the Council during its deliberations.

INTERVENTION BY THE LEAGUE

At a meeting of the Council, held on September 20th, 1920, the precise nature of the action which the Council intended to take was defined in a report submitted by M. Hymans (Belgium) and adopted by the Council.[3] It stated that the Council had been requested to propose a final settlement of the dispute, as a conference between the two countries was then in progress which, it was hoped, would result in peace; but the intervention of the Council was necessary to lay down a provisional line of demarkation, to be adopted while Lithuania was partially occupied by Bolshevik troops. The report intimated that so long as these troops were in Lithuania, that country should not refuse to Poland permission to use Lithuanian territory for military purposes. The League Council then adopted a resolution, establishing as a provisional line of demarkation the frontier fixed by the Supreme Council, and requested Lithuania to withdraw its troops. The resolution also required that Poland agree to respect the neutrality of Lithuania, provided the Soviet authorities did the same. It will be noted that the intervention of the League, as requested by Poland and agreed to by Lithuania, was held by the Council to extend only to the question of providing a temporary line of demarkation, pending the result of negotiations then in progress between the two countries; and, in making this provisional line of demarkation, the Council endorsed the decision of the Supreme Council, upholding the Polish contention.

In this same resolution, the Council offered to appoint a Military Commission to insure, on the spot, observation of the obligations the States would enter into if they accepted the Council's recommendations. Both countries accepted the proposal. M. Paderewski, the Polish representative, in his speech of acceptance, referred to the fact that Poland was setting a good example to the world in avoiding war, by requesting the League to intervene as mediator; and insisted upon shaking hands with the Lithuanian representatives, amidst great applause. Thus began auspiciously the series of events which later shook the foundations of the League's prestige and authority.

THE MILITARY COMMISSION

On September 29th, 1920, the Council appointed a Military Commission, as follows: Colonel Chardigny (France), Colonel Vergera (Italy),

[3] *Official Journal*, October, 1920; p. 397.

Major Keenan (Great Britain), Colonel Hercé (Spain), and Captain Yanamaki (Japan), under the chairmanship of the French member. The duties of the Commission were to bring about a cessation of hostilities, to supervise the retirement of Lithuanian troops to the east of the provisional demarkation line; and to insure respect for the neutrality of the territory after the Lithuanians had effected the retirement of the Bolshevik troops beyond the territory recognized by Russia as belonging to Lithuania.[4]

On October 4th, 1920, the Military Commission assembled at Suwalki and fixed a provisional line, in conformity with the Supreme Council's decision of December 8th, 1919. It established, also, a neutral zone, extending for a distance of six kilometers on each side of the line. It was also agreed, at the request of the Military Commission, to extend a line of demarkation along the whole Lithuanian-Polish frontier. On October 7th, so far as the Commission could observe, the indications were favorable to the suspension of hostilities and to a peaceable settlement of the dispute by the parties thereto.

It will be noted, however, that Lithuania was apparently helpless in the presence of two powerful belligerents—Russia and Poland—and that the League was without power to render any assistance other than to request Poland to respect the neutrality of Lithuania, provided Russia did the same. The Commission set up by the League was a Military Commission under the chairmanship of a national of France, known to be friendly to one of the belligerents—Poland.

THE SUWALKI AGREEMENT

On September 30th, 1920, representatives of Poland and Lithuania entered into negotiations at Suwalki for the purpose of concluding the terms of a settlement. The state of affairs, under which negotiations were conducted, may be judged by two events. The Polish staff agreed to a two hours' armistice on the high road in order that the Lithuanian delegates might proceed in safety to the Conference at Suwalki; [5] and, on October 6th, Marshal Pilsudski reviewed the Polish troops under General Zeligowski, as they left Lida, marching north toward Vilna.[6]

On October 7th, 1920, the Suwalki Agreement was adopted,[7] wherein a demarkation line was agreed upon which gave Vilna to the Lithuanian Government. This line was not to be crossed by the troops of either

[4] *Official Journal, Special Supplement No.* 4; pp. 14-15. [5] *Ibid.*
[6] *The Lithuanian-Polish Dispute,* publication of the Lithuanian Information Bureau, 10 Palace Gate, London; p. 17.
[7] *Ibid.*

country; provision was made for the cessation of hostilities; for the use of the station at Orany; and for the exchange of prisoners. The agreement was to become effective October 10th, 1920, and was to remain in force until all questions between the two countries were settled.

THE VILNA EPISODE

Into this scene of negotiation General Zeligowski hurled a bombshell. On October 9th, 1920, at the head of Polish troops numbering twenty thousand men, he occupied Vilna. This was two days after the signing of the Suwalki Agreement, one day before it was to become effective and five days after the League's Military Commission had established a provisional line and neutral zone. Members of the Lithuanian Government fled from Vilna to Kovno, and it was there that the League's Military Commission received news, on October 10th, of what had occurred.[8] Proceeding to the scene of action in Vilna, the Commission was met by General Zeligowski with the statement that his action had been taken in a manner entirely independent of his Polish official superiors. He then designated the territory which the Government, established by his command, claimed; and stated that he had requested the Polish Government to maintain troops in the territory until he had sufficient men to replace them. He announced, that in case the Lithuanian Government did not withdraw its troops to the west of the line he claimed, he would resort to force. The Commission made a note of the ultimatum, as given by General Zeligowski, left Vilna to "obtain information" at Warsaw and eventually proceeded to Brussels to report to the Council, without returning to Lithuania.

It will be noted that at the time General Zeligowski occupied Vilna, the city was in possession of the Lithuanian Government, for it had been evacuated by the Bolshevik army, and his occupation was a clear violation of the Polish agreement with the League to observe the neutrality of Lithuania, provided the Soviet Government did the same. It was also a breach of Article 16 of the Covenant in that the Polish Government by subterfuge had resorted to war; and it was a violation of the undertakings into which Poland had entered with the League in submitting the dispute.

Thus, Poland, after the war, was the first European state of any consequence to destroy the sanctity of a treaty, to commit a breach of the Covenant, and to re-establish the doctrine of force almost in the

[8] *Official Journal, Special Supplement No.* 4; pp. 33-34.

very presence of the League's Military Commission of Peace. The manner of these acts was particularly obnoxious since, almost at the moment that representatives of the Polish Government were affixing their signatures to a treaty of peace, a Polish general, with the knowledge of Marshal Pilsudki, was marching on Vilna. There seems to be no doubt whatever that this act had the approval of the Polish Government, for General Zeligowski's force was increased to fifty thousand men, supplies were furnished to him, as were also ammunition and machine guns.[9] At no time did the Polish Government take any action to evict him or discipline him for the acts which it disclaimed.[10]

If vigorous and constructive action was to be undertaken by the League of Nations, here was a situation to hand. For Article 16 is explicit. It says if any member of the League resorts to war in disregard of the Covenant it shall be declared *ipso facto* to have committed an act of war against all other members, and that member states shall sever trade and financial relations with such an offending state and the Council shall recommend what military, naval and air forces each member shall contribute to the armed forces to be used to compel respect for the Covenant. Member states have agreed under such conditions to support each other and to permit such forces to pass through their territory. Also, the Council may suspend a member state which has violated the Covenant.[11]

THE LEAGUE AND VILNA

Under these circumstances what did the League do? M. Paderewski, the Polish representative, was immediately summoned to Paris and was requested to inform his Government of the gravity of the situation. He replied that his Government disavowed and condemned General Zeligowski's action and would take steps to put an end to the incident.[12]

On October 14th, 1920, a communication was sent from the Council to the Polish Government, pointing out that as Poland had appealed to the League and accepted its proposals, the occupation of Vilna was a violation of its undertakings with the League Council. It, therefore, requested the evacuation of Vilna. The Council at the same time sent a communication to the press, setting forth its intention to compel respect for the Covenant.[13]

[9] Bourgeois: *L'oeuvre de la Société des Nations;* p. 228.

[10] Under date of November 9th, 1923, the New York *Times* contained a cable dispatch in which it was stated that General Zeligowski was at the head of Polish troops engaged in quelling riots in Cracow.

[11] Chap. I; p. 16.

[12] *Official Journal, Special Supplement No.* 4; p. 140. [13] *Ibid.*

On October 26th, 1920, at a meeting held in Brussels, Lithuania proposed that the question of the occupation of Vilna be submitted to arbitration. The Polish delegate, M. Askenazy, while again disavowing the acts of General Zeligowski, insisted that he was without authority to submit this question; and the Council took the position that without the consent of Poland, the League could not arbitrate.[14] The Military Commission was, however, entrusted with the "settlement of difficulties which might arise" and suggested the setting up of a second neutral zone, this one in the district of Vilna. This proposal was followed and the Polish and Lithuanian governments signed an armistice at Kovno on October 29th.

What, then, was to be done in a situation where the main problem had ceased to be the observation of a line of demarkation for which a permanent settlement was being effected; but had become a question of the maintenance of the principles upon which the League was founded? The fact that Poland had verbally disavowed the act of General Zeligowski did not absolve it from responsibility or from the duty of rectifying its breach of the Covenant. But instead, the Polish Government condoned the act by rendering military assistance, thus constituting the occupation of Vilna the act of the Polish Government. The course before the Council was either to evict General Zeligowski from Vilna, or to recommend the application of the provisions of Article 16 to Poland.

THE POPULAR CONSULTATION

Instead of applying Article 16, the Council undertook an amazing experiment. It did not appeal to its members to sever trade and financial relations with Poland; it did not undertake to suspend Poland from membership until General Zeligowski withdrew; it did not recommend a military force to compel observance of the Covenant, as is provided in Article 16. On the contrary, at a meeting on October 28th, 1920, the Council recommended that a "popular consultation" be held in the territories under dispute, under the auspices of the League, to be safeguarded by an international police force. In this fashion, the inhabitants were to vote for annexation to Poland, or for remaining with Lithuania. It should be remembered that this proposition was made at a time when a large alien military force was in full possession of this territory and was ruling its inhabitants. The resolution authorizing this plan was as follows: [15]

[14] *Official Journal, Special Supplement No.* 4; pp. 134-138.
[15] *Ibid.;* pp. 142-143.

"The Council of the League of Nations desiring above all to re-establish peace between the Lithuanian and Polish peoples, and having duly noted the solemn declaration by which the Polish Government has disclaimed responsibility for the action of General Zeligowski and has declared him a rebel; having also noted that both parties claim for the populations concerned the right of self-determination, and base their respective claims on this right:

"Draws the attention of both Parties to the agreements entered into by them with the League of Nations:

"And formally invites them to accept the following recommendations:

(1) A public expression of opinion shall be taken under the auspices and supervision of the League of Nations, whereby the inhabitants of the disputed territory east of the line fixed by the Supreme Council on 8th December, 1919, may freely express their wishes on the subject of their attachment either to the State of Lithuania, the seat of whose Government is at present at Kovno, or to Poland. The Council of the League of Nations shall determine the extent and the boundaries of this territory and shall fix the method of taking the public expression of opinion and its date, so as to ensure the freedom and the genuine character of the vote.

(2) The Council of the League of Nations shall decide what measures shall be taken, before and during this public expression of opinion, whether for the withdrawal or for the disarmament of any troops of whatever nationality in occupation of the territories in which the public expression of opinion is taken. With this object, and to ensure the carrying out of the Council's recommendations, the latter shall have the right to exercise forthwith control over the roads and railways leading to the disputed territory or passing through it."

The Polish Government formally accepted the terms of the resolution, but made certain reservations as to the area and methods. Its note of acceptance stated that the Polish Government could not take upon itself the responsibility of demobilizing by force the troops of General Zeligowski, then in Vilna, and *suggested that his army might be converted into a local militia.*[16]

The Lithuanian Government accepted the Council's proposal in principle, but requested information concerning the area and *modus operandi* of the proposed plebiscite. In the course of its correspondence on the subject it pointed out: (1) That some guarantees should be provided by the Council to the population in order to render possible the free expression of the true popular will at the election; (2) that the Lithuanian Government demanded that it be recognized as a *de jure* government before the election, as people might hesitate to attach themselves to an unrecognized country; and (3) that Lithuania found itself menaced by Russia; for in a note dated January 30th, 1921, that Government had declared that the sending of an international military

[16] *Official Journal, Special Supplement* No. 4; p. 152.

force into Lithuania was a violation of the Treaty of Moscow and would be considered an unfriendly act.[17] Lithuania, therefore, asked the League to take measures to prevent the proposed plebiscite from imperilling the security and independence of the country. It also pointed out that no plebiscite could be fairly conducted while Polish troops remained in Vilna.

It will be observed that assent in principle to a plebiscite was given by both states; but no agreement was reached upon the essential details necessary to insure its proper execution.

THE INTERNATIONAL POLICE FORCE

Notwithstanding the reservations, and lack of agreement upon methods by the two states concerned, the Council proceeded with its plans for holding a plebiscite. A civil commission was appointed which, among its other duties, on November 21st, 1920, began the organization of a military force which the Council had decided to send to the Vilna district. The troops were to be supplied by Belgium, France, Great Britain and Spain; and, if possible, by Denmark, Holland, Norway and Sweden. The force was to be under the direction of Colonel Chardigny, Chairman of the League's Military Commission. They were to proceed December 1st, 1920. The states sending troops were to finance their own contingents; but later were to be reimbursed by Poland and Lithuania, in proportion to the results of the plebiscite.[18]

Several obstacles arose. France requested passage across Switzerland for her division—which request was denied by the Swiss Federal Council, on the ground that the obligation to give passage to foreign troops did not exist within the scope of Article 16, and that Switzerland had made specific reservations, in the Declaration of London of February 13th, 1920, with regard to such limitations of her sovereignty. It was also pointed out, in the absence of full and complete agreement between the parties as to the details of the plebiscite, that armed conflict was not an impossible contingency—a situation unwelcome to Switzerland.[19]

Both parties to the dispute created new obstacles: Lithuania by repeated reservations and objections; and Poland by delays in reducing the forces of General Zeligowski in Vilna. It became evident that the plan could not succeed; and on March 3rd, 1921, the Council held a meeting in which it passed a resolution abandoning the popular con-

[17] *The Lithuanian-Polish Dispute;* p. 20.
[18] *Official Journal,* January-February, 1921; pp. 5-6.
[19] *Ibid.,* March-April, 1921; pp. 173-174.

sultation and suggesting as a substitute the resumption of direct negotiations on equal terms, to be opened in one month in Brussels under the direction of M. Hymans (Belgium). This proposed conference was for the purpose of settling all territorial, economic and military questions in dispute between the two countries.[20]

The troops already assembled ready to march were disbanded and the plan to hold a popular consultation came to nothing, for it was an expensive experiment, wholly impracticable under prevailing conditions; but it demonstrated the competence of the Council to raise military forces and direct their operation.

NEGOTIATIONS UNDER THE AUSPICES OF THE LEAGUE

The Polish and Lithuanian Governments accepted, with reservations, the proposal for direct negotiation as contained in the resolution of March 3rd. On May 6th, 1921, a meeting was held in Brussels under the presidency of M. Hymans, to consider a draft agreement. The Polish request that representatives from General Zeligowski's Government take part in this conference rendered it fruitless.[21] On June 27th, the Council considered a preliminary draft, presented by M. Hymans, as a basis for the discussion and solution of the problem.[22] On June 28th, representatives of both countries appeared before the Council, but the insistence of the Polish Government that representatives attend from the Central Lithuanian Government under General Zeligowski, rendered this meeting futile. The Council then directed M. Hymans to draft a resolution and resume meetings in Brussels by July 15th. In the meantime, so many objections were raised that M. Hymans did not resume meetings in Brussels, but requested the delegations of the two Governments to meet in Geneva on August 25th, 1921.[23] On September 3rd, a second draft agreement was prepared. To this agreement the Lithuanian Government proposed certain amendments, while the Polish Government gave its adherence to the first draft, as adopted by the Council on June 27th.[24] This created a deadlock, and the matter again went to the Council on September 20th. It adopted the second draft and decided, as the Assembly was in session, that the matter should be explained to that body, in the hope that its moral authority might contribute to the settlement. In the meantime, the representatives of the Allied Powers made a special appeal to the two

[20] *Official Journal;* p. 181.
[21] *Ibid.,* September, 1921; p. 774.
[22] *Ibid.;* pp. 764-765.
[23] *Ibid.,* October, 1921; pp. 879-880.
[24] *Ibid.,* November, 1921; pp. 990-999.

states to settle their differences.[25] On September 24th, the Second Assembly discussed the matter. M. Bourgeois (France) declared that the Assembly was not called upon to pass sentence upon an appeal from the Council, as it had not examined the dispute or its proposed settlement; and, therefore, it was only a manifestation of a moral order that was expected. The Assembly apparently took this view, for it adopted the following resolution: [26]

"The Assembly, having heard the explanation of M. Hymans on the dispute between Poland and Lithuania, and having taken note of the resolution of the Council of September 20th, expresses its warm appreciation of the skill and patience displayed by M. Hymans in the cause of peace, and thanks the Council for its action, and assures it of the full support of the Assembly. Appealing to their wisdom and to their common memories of the past, the Assembly calls upon the two peoples to reach an agreement which is as necessary for them as for the peace of the world." [27]

Neither the appeal from the Allied Powers nor this resolution was well received by the two Governments, for Poland made no immediate official reply; and Lithuania declined to accept, without amendment, the second draft. On December 1st, 1921, the Polish Government notified the Council that General Zeligowski had withdrawn from Vilna. But the Council noted that the Polish troops remained and that the retiring general had appointed a successor to carry on his regime without change, and that he had issued a decree providing for an election to be held January 8th, 1922, under a Provisional Government Commission.[28]

FINAL DECISION OF THE COUNCIL

On January 13th, 1922, the Council abandoned its plan of direct negotiations and adopted a resolution in which it noted that the disputants had refused to accept its recommendations of September 20th, 1921, and that this refusal put an end to the procedure of conciliation, as instituted on March 3rd, 1921. The Council, therefore, decided to withdraw its Military Commission. The resolution stated: [29]

"Nevertheless, as the Covenant imposes on the Council the duty of acting in all circumstances with a view to averting any war or threat of war, the Council notes with satisfaction the formal engagement, under-

[25] *The Lithuanian-Polish Dispute;* pp. 38-45.
[26] *Records of the Second Assembly;* p. 399.
[27] This appears to be the first instance where the Assembly abdicated its right to examine thoroughly and deal fully with a dispute, in favor of a policy of giving moral support to the Council.
[28] *Official Journal,* February, 1922; p. 133. [29] *Ibid.;* p. 100.

taken on behalf of both Governments by their representatives, to abstain from any act of hostility and thus to maintain the peace which has been fortunately preserved during the past year by the intervention of the League of Nations. The Council further invites the two Governments, if they are unable to come to an understanding for the reciprocal establishment of diplomatic and consular relations, to confide their respective interests to friendly Powers, whose representatives would be entrusted with the duty of supervising the observation of the measures in the interests of peace, which are recommended by the present resolution.

"The Military Commission which was constituted by the Council had established two neutral zones—one in the region of Suwalki on both sides of the so-called Curzon Line, which was fixed by the Supreme Council on December 8th, 1919, the other in the Vilna district.

"The Council considers that, after the withdrawal of the Military Commission, it would be advisable, as a *modus vivendi,* to substitute a provisional line of demarkation for these neutral zones, it being of course understood that the territorial rights of the two States would be in no way prejudiced thereby. The Council invites the representatives of the two Governments to accept this solution. Should they do so it is prepared to suggest the measures necessary for marking out this line on the ground.

"The Council has received from the Lithuanian Government a protest, dated December 15th, against the elections organized in the Vilna district by the administration at present established in this territory and under the authority of the military occupation which has been in force there since October 9th, 1920. The Council takes note of this protest.

"The Council cannot recognize any solution of a dispute, submitted to the League by one of its Members, which may be reached without regard to the recommendation of the Council or without the consent of both the parties concerned.

"As regards the protection of minorities, Poland is bound by the obligations imposed upon her by the Treaty of Versailles on June 28th, 1919; Lithuania has undertaken by her declaration of September 14th, 1921, to apply the general principles contained in the treaties regarding minorities.

"As regards the Vilna district, as the League of Nations has the duty of seeing that protection is afforded to minorities in Poland and Lithuania, the Council is convinced that both parties will consent to its sending representatives to the spot, should it see fit to do so, to collect the necessary information for a report to the Council on the subject."

The maintenance of peace referred to in this resolution with satisfaction seems not to be sustained by events, for numerous allegations from both sides were made concerning the atrocities which resulted wherever the forces of the two countries came into contact. Also, in January, 1922, the month in which this optimistic statement was written, it was reported that "about fifty persons of the intellectual classes of the Lithuanians and White Russians were imprisoned and

thirty-three persons, leaders of the Lithuanians and White Russians, had been expelled beyond the demarkation line." [30]

The resolution contained a new proposal, namely, that the neutral zones established by the Military Commission should be replaced by a provisional line of demarkation. The Lithuanian Government later alleged that this recommendation and its consequences exceeded the limits of the dispute, as submitted by the Polish Government and as agreed to by Lithuania, and was, therefore, beyond the right of the Council to impose.[31]

The resolution laid down a fundamental principle which later was to cause difficulty. It stated that the Council could not recognize any solution of a dispute submitted to it which may be reached without regard to the recommendations of the Council or without the consent of both parties concerned. Lithuania, in a challenge to the competence of the Council, later contended that the Council had violated the principle laid down in this resolution.[32]

At the meeting held on January 13th, 1922, after the Council had abandoned the settlement of the dispute, the Lithuanian representative expressed profound disappointment that the negotiations had been closed at a time when the Polish Government, through an election, was endeavoring to legalize General Zeligowski's occupation. He stated that his Government was willing to refer the matter to the Permanent Court of International Justice and asked the Council to appoint a High Commissioner to mediate between the two Governments.[33] At the same time, he opposed the line of demarkation proposed by the Council, as not calculated to improve the situation. As this line of demarkation recognized the occupation of General Zeligowski, and gave Vilna to Poland, the Polish Government interposed no objection to the terms of the resolution. Negotiations were broken off and the stage was set for the last act in the drama which had for so many months occupied the attention of the League.

THE NEUTRAL ZONES

It will be recalled that one of the acts undertaken in October, 1920, by the League Military Commission was to establish two neutral

[30] *The Lithuanian-Polish Dispute,* Vol. III; p. 20.
[31] Chap. XXXIII, p. 624. [32] *Ibid.*
[33] The Permanent Court had just been organized, and during the next year, while the dispute continued, it was either idle or occupied with theoretical questions concerning the International Labor Office.

zones.[34] The neutral zone of Suwalki had been drawn on both sides of an existing line of demarkation. Therefore, on each side of that line the state police of the respective countries were responsible for order. But the neutral zone of Vilna was not fixed by any demarkation line and was under the control of the Commission; no other Government or authority was permitted to rule over this area and no troops of either Poland or Lithuania were supposed to occupy it. In the area, thus set apart, there resided about 16,000 inhabitants. When the Council decided to withdraw the Military Control Commission, in January, 1922, it considered the abolition of these zones and the establishment of a line of demarkation in the Vilna district. The plan had to be abandoned, owing to the fact that Lithuania was unwilling to recognize any line of demarkation other than the Suwalki line. But on February 3rd, 1923, at a meeting of the Council in Paris, M. Hymans brought up the subject of these zones which had been left without protection for over a year. He recalled that on May 17th, 1922, the Council had sent M. Saura to Lithuania to study conditions in the zones; and that M. Saura had reported that the military necessities which had created them had disappeared; that Polish militia occupied the larger part of the Vilna zone, but as Lithuanian militia were also in the territory, conflict and bloodshed prevailed.[35] M. Saura had proposed in detail a provisional line of demarkation which would end "this terrible state of affairs." Under his recommendation, Vilna and a great part of the territory under dispute were to be allotted to Poland.

Accordingly, on February 3rd, 1923, the Council adopted the following resolution: [36]

"The Council of the League of Nations,

"After noting M. Saura's report, prepared in execution of its resolution of May 17th, 1922, which followed upon the recommendation of January 13th of the same year, and also upon the observations, both oral and written, which had been submitted by the representatives of the Lithuanian and Polish Governments with regard to the determination and tracing of a line of demarkation in the neutral zones;

"In view of the necessity of ending as soon as possible the state of disorder and insecurity at present prevailing in these zones which were in the first place established on the initiative of the Military Commission

[34] A third neutral zone was established north of the Vilna zone, but this was never recognized by Lithuania, and, since it was undisputed Lithuanian territory, it was returned to that country in its entirety. The total area of the neutral zones was 1,400 square kilometers, with 33,000 inhabitants. (*Official Journal*, March, 1923, p. 224.)

[35] *Official Journal*, March, 1923; p. 356. [36] *Ibid.*; p. 238.

of Control and by the authority of the Council, makes the following recommendation:

"That, as from February 15th next, the two Governments concerned shall each have the right to establish their administrations in the parts of the neutral zones defined as follows: [37]

"The demarkation thus laid down shall retain the provisional character referred to in the Council recommendations of January 13th and May 17th, 1922, and the territorial rights of both States shall remain absolutely intact.

"The Council would remind the two Governments of their solemn undertaking to refrain from all hostile acts, and would ask them to employ all the means at their disposal to disarm and disband the irregular formations which may be found in those districts in which they have been granted the right to establish their provisional administration;

"And declares that the present recommendation, which is intended solely to secure peace in a sorely tried district, is its final recommendation on the question submitted for its consideration."

This resolution is noteworthy in two important respects. In the first place paragraph 2 sets forth that a state of disorder and insecurity prevailed in zones established on the initiative and by the authority of the Council. This act left a whole people without responsible government to supervise protection, education, or the institutions of civilized society. This state of affairs demonstrated the incapacity of the League for government, for it occurred in a territory created by the League and subject to its own full control. Only when matters reached a nauseous state did the League make an investigation into conditions created by its own policy and reach a decision. In the second place, the decision was nothing less than to recommend that Poland should retain the fruit of General Zeligowski's occupation of Vilna.

Thus, in 1923, the Council put its stamp of approval upon an act which it had condemned in 1920; it condoned the breach of its own Covenant; and it ignored the violation of the Suwalki Treaty. Poland quite naturally accepted the provisions of this resolution which would legalize its conquest, but Lithuania did not. Thereupon occurred a third extraordinary decision. The President of the Council stated that as the Council had accepted the recommendation unanimously, paragraph 6 of Article 15 of the Covenant was applicable; and if Lithuania, by force, opposed the resolution, Article 16 would be put into operation; and if Lithuania resorted to war it would be deemed to have committed an act of war against all other members of the League.

Thus, Poland, a large state, was permitted by the Council to defy its authority, to break the Suwalki agreement, to invade Lithuanian terri-

[37] The detailed boundary line is omitted.

tory, to capture Vilna and to bring to naught all of the efforts of the Council because the Council could reach no unanimous agreement to apply Article 16 to Poland. But Lithuania, a little state, because it would not accept the confiscation of Vilna in favor of Poland was threatened with Article 16. This disregard of principles of justice, this abandonment of a people to its fate in the neutral zone, and this recognition of military force in the usurpation of territory, constitute a singular contribution made by the Council to the causes of peace and justice.

THE CONFERENCE OF AMBASSADORS

All that remained was for the Conference to give effect to the proposed line of demarkation suggested by the League of Nations, for the latter was without authority to determine finally boundary questions. But the Conference of Ambassadors remedied this defect in a decision rendered on March 15th, 1923, in which the provisional demarkation line, as recommended by the Council, was made permanent. The Conference had the right to make this decision by reason of the authority given by the Treaty to the Principal Allied Powers to fix the boundaries of Poland.

It is not generally known by those who either condemn or approve of the decision of the Conference of Ambassadors which legalized the forceful occupation of Vilna by the Poles, that the draft of the demarkation line was prepared under the direction of the Council and recommended by it to the Conference. The League, therefore, is responsible for the proposal; and, it seems, should share with the Conference whatever obloquy or credit may attach to the final decision, legalizing the capture of Vilna.

Poland accepted the decision of the Conference of Ambassadors, but Lithuania refused. Although the Polish Government now retains control of Vilna and the territory allotted by this decision, the two countries are not at peace. When the writer visited the district in August, 1923, communications between the two countries were suspended; and there was no way of traveling to Kovno from Vilna except *via* Riga (a difference between three hours and twenty-three hours, and across Latvian territory). The boundaries were guarded by soldiers, and no passport was recognized. The railway and telegraph lines had been severed at the borders of each country; and all intercourse between the two States along this boundary was conducted under the safeguard of a flag of truce tied to a bayonet, as attempts to cross the border in any other way might mean instant death. It was stated that "such accidents occur

frequently."[38] The boundary line was indicated by wisps of hay or straw tied to the tops of sticks thrust into the ground, indicating how temporary is the settlement of this dispute and how frail are the foundations upon which peace rests.[39]

COMMENTARY

This dispute presents certain elemental facts: Lithuania and Poland claimed the same territory. The Supreme Council marked out a provisional boundary line which Lithuania, not being a signatory to the Treaty, did not recognize. Poland appealed to the League, but failed to secure immediate help on its side. It then tried to shed the League, first by negotiating an agreement at Suwalki and then by capturing Vilna. The action of the League, applied to these bare brutal facts, consisted of: Elaborate efforts to evade dealing with the one fundamental fact, namely, the presence of Polish troops in Vilna; failure to act promptly with the perfidy of Poland under the Suwalki agreement; tolerance of the contempt with which a member state defied the Covenant; hesitancy in applying Article 16 to a Power protected by a Principal Allied Power; promptness with which it threatened to apply Article 16 to a small state which had no such friend; creation of a neutral territory, leaving the people to their fate without government; and finally abandoning the task and condoning an act which it had once condemned.

The cause of peace has suffered incalculable harm, and the sense of security immeasurable loss through the policy thus pursued; as may be seen from the settlement of this dispute which established the following principles:

A member state may request intervention by the Council in a dispute to which it is a party and then refuse to submit important elements of that dispute to arbitration when the course taken does not meet with its approval. Such was Poland's refusal to arbitrate the seizure of Vilna.

A member state which has submitted a dispute may prevent the application of Article 16 to its subsequent use of force, by entering a

[38] That peace is not yet established on this frontier appears from late reports. The Conference of Ambassadors was notified by Poland that armed Lithuanian bands had attacked a village near Vilna on the night of May 19th, 1924. The Lithuanian Government emphatically denied that any attack had taken place. Poland insisted, with the result that early in June Lithuania addressed to the Secretary-General of the League a note complaining of the accusations of Poland and presenting counter charges. The note appears not to have been considered at the June session of the Council. (See *Journal de Genève*, May 22nd and 26th, 1924, and London *Times*, June 7th, 1924.)

[39] Chap. XII; p. 264.

disclaimer that it is not responsible for the acts of its nationals, even though they wear Polish army uniforms and are commanded by a Polish general; and even when it is known that the Government is aiding and abetting its nationals in their aggression. Such was the act of General Zeligowski.

A member of the League may violate a treaty of peace, negotiated with the consent and co-operation of the League Council, and escape any consequences from the Council. Such was the Suwalki agreement.

The League may, in the course of settling a dispute, create neutral zones, subject to its direction. When it cuts off such zones from their normal administration and provides no civil government or protection for the people there is none to call the League to account. Such were the neutral zones which existed for a period of two years by act of the Council.

The League, with the consent of the parties, may order an election in an effort to maintain peace and may raise an international militia to insure a fair expression of the people's will; but, if and when, the parties repudiate their agreement to permit such election, the League has no alternative but to abandon the election and disband the militia. Such was the "popular consultation."

The League laid down the principle that it could not recognize a settlement of a dispute which did not have the approval of both parties. Later it held that this principle was abrogated by the unanimous vote of the Council, but where the Council cannot agree, the opposite prevails. Such was the application of Article 15.

Article 16 as a practical matter cannot be applied to a strong state protected by a Principal Allied Power, even though it invade foreign territory and capture a city; but it can be applied to a smaller state, not so protected, when it refuses to obey a decision of the Council legalizing such forceful occupation. Such was the threat to apply Article 16 to Lithuania and the failure to apply it to Poland.

When a matter before the Council is referred to the Assembly it will be considered to be for the purpose of enlisting its moral influence; its careful examination of the facts and independent action not being essential. Such was the principle set forth by M. Bourgeois and nowhere denied.

CHAPTER XII

THE AGGRESSION OF MEMEL TERRITORY

The Territory of Memel is a long narrow strip of land between East Prussia and Central Lithuania. Through the territory flows the River Niemen, at the mouth of which is situated the port of Memel. The Memel district was German for over six hundred years, having been taken from Lithuania by the same order of Teutonic knights which conquered Danzig and East Prussia. Under German rule the port of Memel was not much developed, since it was cut off from its natural hinterland, Lithuania. Since the Baltic States declared their independence, however, Memel has become of vital importance to Lithuania as its only natural outlet to the Baltic Sea. The territory is about 150 kilometers long and 20 kilometers wide and has a population of 140,000, about one-half German and the rest Lithuanian. The town of Memel itself has over 30,000 inhabitants, 25,000 of whom are German.

On the theory that Lithuania required an outlet to the sea, the Allied Powers, at the Peace Conference, decided to separate the territory of Memel from Germany. While admitting that the city of Memel was German, the Allied Powers pointed out that the cession of the territory did not conflict with the principle of nationality since the surrounding districts were Lithuanian.[1] Article 99 was, therefore, inserted in the Treaty of Versailles in accordance with this theory, as follows:

"Germany renounces in favor of the Principal Allied and Associated Powers all rights and title over the territories included between the Baltic, the northeastern frontier of East Prussia, as defined in Article 28 of Part II (Boundaries of Germany) of the present Treaty and the former frontier between Germany and Russia.

"Germany undertakes to accept the settlement made by the Principal Allied and Associated Powers in regard to these territories, particularly so far as concerns the nationality of the inhabitants."

It was also considered advisable to internationalize the Russ-Memel-Niemen River from Grodno, on the Polish border, to the sea; together with all navigable parts of the system, lateral channels and canals.[2]

When the Versailles Treaty came into force, the Lithuanian State had not yet been recognized by the Powers acquiring the rights and title to the Memel territory. The Supreme Council, therefore, entrusted

[1] *A History of the Peace Conference of Paris*, Vol. II; p. 366.
[2] *Treaty of Versailles*, Article 331.

its provisional administration to the French General Odry, who, early in 1920, established a civil administration called a Directorate, composed largely of Germans. He left the control of the railways in charge of the Prussian Railway Office at Kœnigsberg. After transferring his powers to M. Petisné, a French prefect, who was designated as High Commissioner, General Odry left Memel.

On December 20th, 1922, the Principal Allied Powers decided to recognize Lithuania *de jure*, but at the time explained to Lithuania that this act did not imply any change in the status of Memel, and the administration above described continued.[3]

THE UPRISING IN MEMEL

The Lithuanians had noted with satisfaction the taking of Memel from Germany by the Allied Powers on the ground that it was to be given to them as a sea outlet. After the recognition of Lithuania, its representative appealed to the Allied Powers for the annexation of the Memel territory to Lithuania; but the Conference of Ambassadors delayed action. With the loss of Vilna and with the further hemming in of Lithuania on the south and east by Poland, as a result of the line of demarkation proposed by the League of Nations in the Polish-Lithuanian affair; and with the establishment of a virtual state of war and the severance of all communication (rail and otherwise) with Poland along the Vilna-Grodno line, the possession of a free egress to the sea became of vital importance to Lithuania.[4]

On January 9th, 1923, after a four years' delay by the Conference, Memel experienced a change of government as the result of an insurrection. The Lithuanian account of the uprising states that it was a voluntary undertaking by the people in the Memel district; that invading bands of Lithuanians occupied some communes and finally Memel itself; that the revolutionists were not in uniform and that they were joined by the populace as they marched on Memel. The French troops and the High Commissioner offered some resistance and were overthrown, along with the German Directorate in charge of the local administration. M. Simonaitis was made head of the rebel government.

The report of the Extraordinary Commission sent by the Conference of Ambassadors [5] to make an inquiry does not agree that the uprising was spontaneous and disorganized; but, on the contrary, stated that on January 3rd, 1923, M. Zilius, the Lithuanian representative at Memel,

[3] *The Question of Memel,* Publication of the Lithuanian Information Bureau, 10 Palace Gate, London; pp. 184-186.

[4] Chap. XI; p. 261.

[5] *The Question of Memel;* p. 69.

and M. Simonaitis were in Kovno for a conference; that on January 4th the attack upon the territory was decided upon; that orders were given by the Lithuanian Ministry of War and that officers and men in civilian clothes conducted the invasion. The report stated further that the leader of the rebel army was an army colonel and that the invaders were supplied with arms, munitions and rations by the Lithuanian Government. The Commission estimated that from two to three thousand soldiers, operating as civilians, joined the populace in the capture of Memel.[6]

On January 9th, 1923, a manifesto was published by the "Committee for Salvation of the Memel Territory" at Heydekrug—a small town in the Memel district—notifying the inhabitants, that as the German Directorate was trying to establish the status of Memel as "free territory" and thereby complete its ruin; as over one milliard of debts were weighing on the territory for the army of occupation; and as the population was still being oppressed, the Committee thereby assumed power, deposed the Government, and authorized M. Simonaitis to assume the duties of President and name, within three days, a Directorate of five members. This same manifesto also ordered officials to keep their offices, proclaimed a state of siege and set up a special court to deal with disturbances. The Committee also issued a proclamation to the French officers and soldiers of the garrison of Memel, reminding them that M. Clemenceau had declared that the majority of the Memel population was Lithuanian; and stating that it was only as a result of German machinations that Memel was not yet united with Lithuania. It expressed the hope that no blood would be shed.

On January 10th, the French representative and the British Consulate at Kovno protested to the Minister of Foreign Affairs of Lithuania against the suggested assistance, whether official or unofficial, of the Lithuanian partisans; stating that they refused to recognize the new government of Memel and requesting the Lithuanian Government to use its influence to prevent destruction of life and property. On January 11th, the Lithuanian Government replied that it had already taken

[6] The seizures of Vilna and of Memel were not of the same order. Vilna was the recognized capital of Lithuania, and the Polish Government, by the Suwalki agreement, had placed the town under Lithuanian sovereignty two days before General Zeligowski took it with a Polish army. Memel was promised to Lithuania by the Allied Powers, and their delay in fulfilling their promise caused Lithuania to fulfill it through an organized insurrection of its people. The two seizures are alike only in that both governments denied official responsibility for their acts and that both resorted to force without appealing to the League of Nations.

measures to prevent the crossing of armed partisans from Lithuania to Memel. The Government used the occasion to remind the Allied Powers that it had repeatedly called their attention to economic and financial crises in Memel and to the oppression of the Lithuanian people.[7]

The new government, established by the insurgents, guaranteed inviolability and liberty to the French troops and Allied authorities on condition that the Director and insurgent troops be admitted to the city of Memel. M. Petisné refused and ordered the French troops and local militia to defend the city; they fired on the insurgents, killing or wounding ten of them, whereupon the Lithuanian forces took Memel by force. An armistice was established on January 15th and on January 19th, the General Assembly of the Memel Territory passed a declaration, embodying the following program: (1) To unite with the Republic of Lithuania, as an autonomous part; (2) the "Central Committee of Salvation of the Memel Territory" was to accomplish the union and was to be recognized by the Allied Powers and other states; (3) the Lithuanian Government was asked to assist by military and financial support; (4) the Central Committee was to be the principal representative of the Memel Territory; and (5) the Central Committee was to organize a Council, composed of representatives of organizations and the chief political groups.[8]

THE DILEMMA OF THE CONFERENCE OF AMBASSADORS

News of the insurrection was sent to Paris; and the Conference of Ambassadors found itself in an awkward position. The Allied Powers, having taken Memel from Germany on the theory of granting Lithuania a port and having failed to keep their promise, they were hardly in a position to risk public opinion by using force against the provisional government established by the Lithuanians. They faced the alternatives of recovering control of Memel by peaceful means or yielding the port in accordance with their original promise. The Conference, therefore, sent a note, dated January 11th, 1923, to the Lithuanian

[7] Efforts have been made to minimize the part taken by the insurrection in bringing about a settlement of this question in order to enhance the achievement of the League. Thus, Mr. Norman Davis, Chairman of the Memel Commission, in an address delivered in New York City in April, 1924, gave what purported to be an account of the Memel controversy—its origin, development and settlement—and omitted all mention of this insurrection.

[8] Events from January 9th-19th are described in detail in *The Question of Memel;* pp. 45-55.

Government, calling attention to the unfavorable impression made by the insurrection at the moment the Conference of Ambassadors was preparing an impartial decision on the status of the Memel territory. The Lithuanian Government replied by wire, denying the charges and stating that Lithuanian authorities had taken measures to prevent their nationals crossing the frontier and requesting that the Allied Powers give instructions to prevent bloodshed. On January 13th, 1923, the Conference protested in a second note which requested the Lithuanian Government to take energetic measures to prevent Lithuanians from joining the movement, and charged it with violation of the sovereignty of the Allied Powers. The Lithuanian Government replied that it had no precise information as to the elements taking part in the Memel revolt, that the frontier between Lithuania and the Memel Territory was two hundred kilometers in length and had only the officials necessary for customs supervision; and that it could not take responsibility for persons who crossed the frontier in illegitimate ways. It stated, as the Territory of Memel was not under Lithuanian administration, that the Lithuanian Government had not the means of action which the Allied Powers seemed to attribute to it. Nevertheless, it hoped to exert a moral influence for conciliation and pacification.

On January 17th, a further note from the Conference of Ambassadors to the Minister of Foreign Affairs of Lithuania stated that they would make no decision until order had been restored. The note stated that (1) the Conference of Ambassadors had been informed that Lithuanian elements had crossed the frontiers and were marching against the town; (2) it regretted that the Lithuanian Government, in spite of its promises, had done nothing to prevent such action; and (3) it accordingly placed all responsibility for events in Memel on the Lithuanian Government and drew the Government's attention to the fact that it was sending a Commission to Memel. To this note Lithuania answered that it had sent special representatives to Memel to help the Commission of the Conference; but the Government had no means of making any Lithuanian return who had crossed into Memel Territory.

On January 17th, M. Simonaitis, Chairman of the new Directorate of the Memel Territory, addressed a note to the Ministers of Foreign Affairs of France, Great Britain and Italy, informing them of the events and stating his regret at the bloodshed, for which he put the responsibility on M. Petisné. On January 19th, in a second note, he protested that three warships—one English and two French—had entered the port of Memel and had disembarked troops. He pointed out that this

was an unnecessary measure, since perfect peace reigned in tne country. These two notes remained unanswered.[9]

THE INSURGENT GOVERNMENT

The Extraordinary Commission of the Conference of Ambassadors arrived in Memel on January 26th, 1923, and at once sent a note to the special delegate of the Lithuanian Government at Memel, informing him that the duties of the Commissioners were: (1) To restore order; (2) having heard the different parties, to institute a provisional government; and (3) to report to the Conference of Ambassadors. The note stated that the Conference of Ambassadors could not work under pressure of force; therefore, the Commission declared formally that it recognized none of the modifications to the status of Memel and invited the population to collaborate with the Commission in its work. The Extraordinary Commission, at the same time, delivered an ultimatum to the President of the Central Committee, demanding an answer by 10 o'clock on the night of January 27th, whether the Central Committee was willing to resign, and to demobilize the Army of the Memel Territory. The Central Committee, in a note on January 27th, 1923, inquired whether failure to comply with this ultimatum was to be understood as a rupture of the armistice concluded on January 15th with the commander of the French troops at Memel; and stated:

"Should the reply be not forthcoming by eleven p. m. today, the Central Committee of Salvation of the Memel Territory will authorise the High Command of the army of the Memel Territory to take the necessary steps to safeguard the interests of the country. The Commission of Enquiry of the Allies will bear all responsibility for the consequences arising from the rupture of the armistice."

To this ultimatum, the Extraordinary Commission replied that it considered the armistice of January 15th to be still in effect, and stated that the formal refusal by the Committee of the demand of the Extraordinary Commission to dissolve the insurgent troops would form the subject of a telegraphic communication to the Allied Governments.

Meanwhile, the Commander-in-Chief of the Army of the Memel Territory had made a declaration to the Commission of the Inter-Allied troops to the effect that French soldiers in mufti had been seen about town; also, rumors were circulating that French troops were preparing to overthrow the established Government. The High Command of the Memel Army, basing its action on the state of siege, issued orders

[9] The correspondence with the Conference of Ambassadors is contained in *The Question of Memel;* pp. 48-53.

that persons on whom arms were found were to be judged by a court-martial and those captured, arms in hand, were to be shot on the spot.

A second declaration to the Inter-Allied Commission stated that the Inter-Allied troops which had arrived on the warships had been buying merchandise in great quantities; and, as Memel was a small territory with limited stock, this had driven the prices of merchandise up considerably, causing much irritation among the population and that the Commander of the Memel Army would not answer for the safety of these troops. He requested that the warships leave the port of Memel, as they were not only superfluous, but also harmful; and if these requests were ignored he would not hesitate to take the necessary measures to protect the population.

At this time, with Allied warships in the harbor and with an Extraordinary Commission sitting in Memel, the policy of the Conference changed from that of intimidation to one of conciliation. The first step taken in this direction was to hold the Lithuanian Government responsible. On February 1st, 1923, a note was sent by the Conference to the Lithuanian Government, stating that the Extraordinary Commission had learned from several sources that the *"coup de force"* by which Lithuanians had taken Memel had been prepared in Lithuania; that the Lithuanian Government had given directions and furnished money and arms and sent officers and soldiers of its regular army. Under these conditions, the Allied Powers requested that Lithuania withdraw all armed Lithuanian elements from the territory within seven days, and dissolve armed bands on Memel Territory; procure the resignation of M. Simonaitis' Government and dissolve the Committee of Public Safety. Then the Allied Powers would form a government which, however, would contain no member of the Simonaitis Government. The Allied Powers stated that they desired to use their authority only to take a decision in conformity with Article 99 of the Treaty of Versailles, which decision would already have been taken without the violent intervention for which the Lithuanian Government was responsible. If these conditions were not fulfilled in seven days, the Allied Governments would notify the Council of the League of Nations of the attitude of the Lithuanian Government, and it might lead to the breaking of diplomatic relations between the Allied Powers and Lithuania. This statement brought a reply on February 5th from M. Simonaitis to the effect that the Extraordinary Commission, instead of making an inquiry had sought to overthrow the Provisional Governmen and create trouble and disorder and invited the Allied Powers to request their Commission to refrain from such action.

The second conciliatory step was taken by the Conference on February 4th, 1923, in the following note sent to the Lithuanian Government:

"The Germano-Russian *démarches* have for object to incite the Lithuanian Government to oppose the Governments of the Entente. Fear of the Allied Governments prevents Germany from attacking Poland, but Berlin hopes that an ill-considered attitude on the part of the Lithuanian Government will create the general disorder which it has in view. In case Lithuania should remain at Memel while still being in opposition to the Powers of the Entente, the German Government, which would then be certain of not encountering resistance from the Allies, would easily be able to retake the territory. It would be otherwise if the Memel Territory were attributed to the Lithuanian Government, thanks to a decision emanating from the Allied Governments. In that case, Germany would hesitate and reflect before embarking upon an attack directed against Lithuania, the object of which would be to recover the Territory from her.

"In the event of Lithuania continuing not to lend her co-operation to the Powers, this attitude would be still more incomprehensible, since the sole result which it would entail would be to trammel the Allied Governments in the decision which they desire to take on the Territory and which would realise the aspirations of the Lithuanian Government. It is certain that the decision of the Allied Powers will transfer the sovereignty of Memel to Lithuania with the sole conditions of autonomy and free exercise of river and maritime transit. * * * *

"Guided by the true interests of the country, the Lithuanian Government is surely in a position to effect the execution of the demands which have been made upon it. If the bands are dispersed, if the armed Lithuanian elements are withdrawn, and if the elements of the Territory which are not compromised form part of the provisional Government, the Allies would at once consider that the authority of which they are the depositories has been restored."

This method of arousing suspicion and fear of Germany, and of making vague promises proved more successful; for, on February 8th, the Lithuanian Government replied, denying responsibility but stating that, prompted by the desire to see Allied authority restored in Memel, it had issued a decree requesting the irregulars to return home before the expiration of three weeks' time. The Allied Powers replied on February 11th that the Extraordinary Commission, having reported that its mission was accomplished, the Conference would render a decision. On February 16th, 1923, the Conference announced its decision to accord to Lithuania sovereignty over the territory of Memel under the following conditions:

(1) "The Allied Powers renounce in favor of Lithuania all rights and titles over the territory defined in Article 99 of the Treaty of June 28th, 1919;

(2) "The establishment in the Memel Territory of an autonomous government and popular representation, together with institutions officially recognizing the two languages in common use and respecting the principle of the equality of all inhabitants of whatever race, language or religion, and of equality of treatment as between nationals and foreigners in the exercise of civil rights and in commerce;

(3) "Organization of freedom of sea, river and land transit, due regard being paid to the interests of the Lithuanian and Polish districts for which Memel is the natural outlet; the port of Memel to be placed under an economic administration which will contribute to its development and which will provide every guarantee, in particular, by the establishment of a free zone and by the appointment of duly qualified representatives, that the Lithuanian and Polish districts concerned will be given at that port the necessary commercial facilities;

(4) "The Memel Territory to refund, under the guarantee of Lithuania, the expenditure incurred on account of its administration and occupation and not yet recovered;

(5) "All goods and property situate in the Territory and formerly belonging to the German Empire or to other German States to be transferred to Lithuania or to the Territory, provided that Lithuania take over for herself and for the Territory the charges laid down in Articles 254 and 256 of the Treaty of Versailles;

(6) "As soon as Lithuania accepts sovereignty over the Memel Territory upon the foregoing conditions, the Conference of Ambassadors, with the assistance of representatives of Lithuania and of the Territory concerned, will draw up at Paris an Organic Statute for the Memel Territory and shall conclude a Convention with Lithuania in conformity with the present decision."

It will be observed that under this decision Lithuania was to receive sovereignty over Memel; but was to guarantee equality of treatment in civil rights and commerce; to consider Polish economic interests in river, land and sea transit; to reimburse the Allied Powers for expenses of occupation and administration; and to undertake to pay reparations for the German property received.

Although this decision was not acceptable to Lithuania, M. Simonaitis resigned, and a Lithuanian Provisional Government was instituted, and was recognized by the Allied Powers, subject to the carrying into effect of the decision. Sovereignty over Memel at no time passed to Lithuania, although that Government administered the autonomous government, thus temporarily established. M. Gailius, formerly Lithuanian Minister at Riga, was made head of the Provisional Government.[10]

[10] The exchange of the foregoing notes and decision of the Conference are contained in *The Memel Question;* pp. 56-63.

THE FIRST MEMEL STATUTE

The Lithuanian Government was requested to accept the decision of the Conference of February 16th and to send delegates to Paris to collaborate in drafting the statute. It replied on February 19th, 1923, that it had taken note of the decision and would inform the Conference regarding the despatch of delegates as soon as arrangements were made with the Provisional Government of Memel. On March 7th, the Conference, having heard nothing further, communicated with the Lithuanian Government and delivered an ultimatum that it expected Lithuania to accept the decision of February 16th without reservation and to send delegates to Paris. The Lithuanian Government, however, objected to paragraph 3, concerning the recognition of Polish interests in Memel and delayed acceptance;[11] but finally, on March 13th *accepted the decision in principle*. The Conference thereupon passed a resolution construing this to be an *unreserved* acceptance of its decision. A Lithuanian and Memel delegation proceeded to Paris, and negotiations were begun on March 24th, 1923. A commission was instructed to draft a statute, but reported on July 25th that the Lithuanian delegation would not accept it. The Lithuanian delegation then departed and the Commission was instructed to draft a statute in accordance with the interpretation which the Allied Powers had placed upon their note of February 16th.[12] This draft statute provided for a somewhat curious and complex form of government. This little territory, which had been administered by a High Commissioner, a local Directorate, and a Railway Administration was to be given the following: (1) A governor to be appointed by the Lithuanian Government (duties not specified); (2) a Council of Ministers of the Lithuanian Republic, which should include a Minister for the Affairs of the Memel District (foreign relations); (3) local bodies consisting of a Chamber of Representatives (to make laws), a Directorate (to execute laws) and a Harbor Board (to administer the Port); and over the Harbor Board an Economic Supervisory Committee; also there was to be an Economic Council to deal with income and expenditures.

But the draft statute contained severe restrictions upon the sovereignty of Lithuania: (1) Article 34 provided that citizens of the Territory should not be subjected to compulsory military service before 1933;[13] Articles 40-46 provided that one member of the Economic

[11] *League of Nations Document* C. 664, M. 295, Dec. 1st, 1923; pp. 3-6.
[12] *Ibid.;* p. 10.
[13] As Lithuania regards itself at war with Poland over the Vilna award, this provision had a special significance in limiting the military strength of Lithuania.

Advisory Committee was to be of Polish nationality. This Committee was to supervise the management of the port and was to be called upon to give its opinion upon all questions relating to its administration, upkeep and development. Any questions regarding its competence were to be appealed by any signatory of the Treaty to the League, whenever a member of the Committee in disagreement with the majority submitted it to any such signatory. Also, in the event that this Committee could not agree upon making its regulations under Article 44, the Principal Allied Powers were to appoint an arbitrator. Article 47 made certain other concessions to Poland, with regard to leasing areas in Memel to facilitate Polish shipping and commerce, the boundaries and rental to be fixed by a special committee of which a representative of one of the Allied Powers was to be chairman. Also, all lumber coming from the basin of the Niemen (controlled in great part by Poland) was to be exempt from customs duties.

But most important to an understanding of this controversy were Articles 38 and 39 of the draft statute. Article 38 provided that Lithuania should ensure the freedom of transit by sea, water and rail, of traffic coming from or destined to the Memel Territory, or in transit through such Territory, and should conform to the rules laid down in the Barcelona Conference in the Statute and Convention on the Freedom of Transit. Lithuania was also to be required to insure freedom of postal and telegraphic communications. Article 39 provided that Lithuania would respect the provisions of the Treaty of Versailles, internationalizing the Niemen River.[14]

The significance of these provisions appears when it is recalled that Lithuania considered itself at war with Poland; it had not accepted the decision of the Conference, awarding Vilna to Poland, and the frontier between the two countries was closed. What the Conference undertook in the proposed statute was to reopen relations between Lithuania and Poland by creating a free port on Lithuanian territory to which Poland not only had access, but in the control of which it was given a voice. The only way in which Poland could use the port was by way of the Niemen River, but the territory on which Poland could connect with the river was claimed by the Lithuanians. Therefore, were Poland granted rights in the statute, Lithuania would be compelled to open the line of communication at the points where the river crossed into Polish territory in the Vilna-Grodno district, thereby accepting the award of Vilna to Poland.

On August 8th, 1923, the Conference transmitted a copy of this draft

[14] *League of Nations Document* C. 664, M. 295, December 1st, 1923; p. 12.

statute to the Lithuanian Government, together with a letter from M. Poincaré stating that the Conference had adopted it; that it believed the principles expressed in its letter of February 16th, 1923, had been generously applied and demanded that the Lithuanian Government sign it within one month without amendment or reservation.[15] In the event of failure to do so, the Conference threatened to refer the whole question under Article 11 of the Covenant to the Council of the League.[16]

On September 21st, the Lithuanian Government replied, declining to sign the draft statute on the following grounds: [17] (1) It refused to establish freedom of transit and communications for Poland, giving as its reasons that the Barcelona Convention applied only to a state of peace; and that the Treaty of Versailles contained no special provision to the effect that the rules announced therein as to the future regime over international rivers should be applicable except in time of peace.[18] The Lithuanian Government pointed out that it considered itself at war with Poland and was unable to accept the above stipulations as that act would be tantamount to an implicit recognition by Lithuania of the situation created at Vilna by the violation of the Suwalki agreement, a condition recognized by the Conference by its decision on March 15th, 1923, and against which the Lithuanians had steadfastly protested. It did agree, however, to the floating of lumber on the Niemen.

(2) Lithuania objected to the Polish representation on the Economic Supervisory Committee on the ground that this was a restriction upon its sovereignty and that an Economic Supervisory Committee over the Harbor Board was impractical whereas an advisory committee would not be. It insisted also that this Committee should have a stronger Memel representation and that it should freely elect its chairman rather than have imposed upon it a representative of the Allied Powers. (3) The Lithuanian Government also objected to the manner of settling

[15] About this time the Lithuanian Government committed a surprising infringement on the rights and property of the Allied Powers. The railways of the Memel district had been administered for the Allied Powers by a German Directorate. This Directorate was notified on August 7th, 1923, that from that day the Lithuanian Government at Kovno would take over the administration, and so it happened, unprotested.

[16] *League of Nations Document* C. 664, M. 295, December 1st, 1923; p. 12.

[17] A comparison with the stipulations in the six points contained in the note of February 16th (set forth on p. 271), will enable the reader to judge of the justice of the objections.

[18] Chap. XXXII for judgment in Kiel Canal Case by the Permanent Court of International Justice.

questions at issue within this Committee by reference to the Allied Powers and the Council, as a restriction upon its sovereignty; also that the appointment of an arbitrator by the Allied Powers to help the Committee draft its rules of procedure, in the event of disagreement, constituted a similar infringement. Also, it objected to the leasing of free zones to Poland as stipulated in the draft statute. (4) It declined to accept Article 51, which reads as follows:

"The expenses of occupation, administration and half the expenses of delimitation of the territory shall be repaid by the Lithuanian Republic to the Powers which have advanced them, within a period of one year from the date on which it receives notification of the amount of these expenses."

The reasons given were that the amount was indefinite, the time for payment short, and that a special committee should take into consideration Lithuania's capacity to pay. Also, Lithuania was unwilling that Lithuanian customs receipts should constitute a first security for the repayment of such expenses. (5) In taking over the properties, situated in the territory formerly belonging to the German Government, Lithuania requested that it should be granted the same privileges with regard to assessment of values, methods, periods of payment and facilities as were granted to other powers (with the exception of France and Belgium), receiving German territory.[19]

This refusal was forwarded to the Allied Powers by the French representative at Kovno. He notified the Conference that while making certain concessions, Lithuania was adamant as to other objections. The government had proposed that, as the draft statute was a question of the interpretation of the proposals contained in the note of February 16th which Lithuania had accepted in principle a legal question was involved which should be referred to the Permanent Court.[20]

The Conference, however, preferred the Council of the League and on September 25th, 1923, requested its intervention under Article 11, charging that Lithuania had accepted the conditions laid down in the note of February 16th, but now refused to accept the draft convention; that the title to Memel still vested in the Allied Powers, but Lithuania continued to intervene in the administration of Memel territory; that the Allied Powers were thus unable to exercise their rights or to transfer the territory to Lithuania; that the present administration of Memel had been recognized by the Allied Powers subject only to the provisions contemplated in the note of February 16th, 1923, and that Lithuania prevented the port of Memel from being used as the outlet of the

[19] *League of Nations Document* C. 678, M. 296, December 1st, 1923; pp. 1-7.
[20] *League of Nations Document* C. 664, M. 295, December 1st, 1923; p. 20.

neighboring Polish regions, thereby threatening good international relations and destroying peace.[21] The Conference, on September 28th, 1923, notified Lithuania of the action taken.

THE QUESTION BEFORE THE COUNCIL

At the meeting held in Paris on December 15th, 1923, the Council took up the question. On December 17th it received a report from M. Guani (Uruguay) and passed a draft resolution which provided for a commission composed as follows:[22]

"Three members belonging to nations other than those at present holding sovereignty over Memel, two of which members shall be appointed by the Chairman of the Committee for Communication and Transit, in consultation with the President of the Council and the member of the Council entrusted with the duties of *rapporteur*, and the third, who shall be Chairman of the Committee, shall be appointed by the Council.

"The present decision, and any observations which have been or may be submitted by the Lithuanian Government, shall be communicated to the President of the Conference of Ambassadors in order that the Powers represented thereon may, if necessary, transmit to the above-mentioned Committee any useful observations." * * *

To this resolution, the Lithuanian representative objected on two grounds: (1) That the Commission should base its work on the decision of February 16th, 1923, instead of the draft convention of the Conference of Ambassadors; and (2) That the chairman should be an American and the other members, representatives of neutral states.[23] The Lithuanian representative presented a substitute resolution which the Council did not adopt. It agreed, however, in principle, for it appointed a Commission consisting of Mr. Norman Davis, under-Secretary of State during the Wilson Administration; M. Kröller (Netherlands) Expert on the League Advisory and Technical Committee on Communications and Transit; and M. Hoernell (Sweden) Member of the Stockholm Academy of Technical Science. This Commission visited Memel, Kovno and Warsaw, and on March 12th, 1924, presented a report to the Council.[24] The Chairman pointed out that the question of a solution was complicated by the intense hostility of the Lithuanian people on account of the Vilna controversy and by the necessity of isolating these two controversies. The Commission therefore proposed

[21] *The Question of Memel;* p. 168.

[22] *The Status of the Memel Territory, League of Nations Document* C. 159, M. 39, 1924, VII, p. 83.

[23] Chap. XI; p. 248, for personnel of the League Military Commission in the Polish-Lithuanian dispute alleged to be partial to Poland; and Chap. VII; p. 164, for the personnel of the Upper Silesian Committee, alleged to be partial to Poland.

[24] *League of Nations Document* C. 159, M. 39, 1924, VII; p. 82.

the adoption of a convention between the Allied Powers and Lithuania, consisting of the Convention proper and three Annexes.[25] In this Convention, the Polish Government was required to relinquish four guarantees which it had received under the convention drafted by the Conference of Ambassadors, namely: (1) The immediate re-establishment of freedom of transit between Memel and Poland by sea, water and rail; (2) a Polish member of the Harbor Board to supervise the economic administration of the Harbor; (3) the allocation of special sites in Memel to meet the economic needs of Polish commerce; and (4) the re-establishment of all communications between Memel and Poland as a condition precedent to the recognition of the legality of the acts of Lithuania in Memel.

The Lithuanian Government was required to abandon its position in the following respects: (1) To assume the obligation to pay reparations, although the amount was not fixed; (2) the introduction of a foreign element in the administration of the port in the person of a representative of the League of Nations; (3) the opening of the Niemen River to districts in possession of Poland, claimed by Lithuania; (4) the granting of privileges to foreigners, including the Poles, for business purposes on terms of equality in Memel, and (5) persons acquiring the status of citizens of Memel were to be exempt from military service until January 1st, 1930. It also appears that Lithuania immediately upon ratifying the Convention and pending its ratification, shall give effect to its provisions and the Allied Powers agree that upon ratification they will recognize such acts as lawful. It does not appear that sovereignty passes to Lithuania until the Convention is ratified by all of the Allied Powers, Great Britain thus far having done so.[26] Furthermore, any infractions of the Convention may be reported to the Council which provision amounts in practice to placing this Convention under the protection of the League.[27]

[25] While the Council had the question under consideration, the Conference of Ambassadors, the Polish Government and the Lithuanian Government conducted a correspondence through the Secretary-General of the League, calling attention to the inaccuracies contained in each other's statements regarding what had transpired.

[26] On this point the report of the League Commission said:

"The transfer of sovereignty and the creation of a clear title is, however, automatically reserved until the Treaty has been consummated by the ratification of all parties. The Commission is advised that it would be exceeding its competence if it should attempt to lay down the terms which the Allies should set as a condition for ratification." *(League of Nations Document* C. 159, M. 39, 1924, VII; p. 86.)

[27] The draft text of the Convention and the three annexes: (1) Statute of the Memel Territory (local charter of government), (2) Regulations of the Port of Memel, (3) Transit Traffic—are contained in *League of Nations Doc.* C. 159,

The beneficiaries under this settlement were the following: *The Allied Powers* relinquished their control over the territory but exacted reparations to be paid to themselves and retained a measure of control through the Council. *Poland* secured the right to float its timber on the Niemen River and equal commercial opportunity in Memel, and the first break in the hostility of Lithuania to any dealings with the Polish Government. *Lithuania* secured the legalizing of its use of force and the vindication of the promise of the Allied Powers, and a limited sovereignty over Memel. Also, it is not required to set aside the custom receipts of the Lithuania Republic in the first place to repay reparations, for the amount, method and periods of payment are to be determined by a commission;[28] and Lithuania is assured of the same privileges as other countries in taking over German property. It won a decisive victory in the abolition of the proposed economic advisory council which was to supervise the activities of the Harbor Board. *The League of Nations* secured the right to appoint a member on the Harbor Board; to protect minorities; to appoint an arbitrator on reparations in case the commission designated to fix the amount and methods of payment should fail to agree; and to protect the Convention whenever the attention of the Council may be called by any of its members to any infraction. Also, it may be pointed out that the Council is a beneficiary in other directions. As to minorities, the procedure adopted by the Council is made binding (Art. 11); and there is a variation from the text of the Minority Treaties. These Treaties declare that the decision of the Permanent Court is final; whereas the Memel Statute states that *there shall be no appeal* from its decision, indicating that somewhere there exists a body superior to the court to which an appeal would lie, unless prohibited. The League acquires the protection of the Convention through insuring that complaints of infractions may be made to the Council; the control of the port, in Annex 1, wherein it is provided that no change in the composition and powers of the Harbor Board, or in the plan of administration, can be made unless approved by a majority of the Council which shall include the four Allied Powers; (Art. 14) and it acquires the control of transit traffic, in Annex III, by a similar provision (Art. 4).

M. 39, 1924, VII. The final text of the Convention, as altered by the Conference of Ambassadors, is not available to the writer. The alterations are claimed to be of form and not of substance.

[28] It is apparent that ratification may be withheld as a guarantee of the fulfillment of these obligations since sovereignty passes only with such ratification.

POLAND, LITHUANIA AND RUSSIA

Notwithstanding the concessions made by Lithuania, the Polish Government was not satisfied with the proposed settlement. Although not a party and not a signatory to the Convention accepted on March 13th, 1924, the Polish Diet passed unanimously a resolution in which it stated that the Principal Allied Powers recognized conditionally the sovereignty of Lithuania over Memel by making it depend upon Lithuania's guaranteeing the economic rights of Poland, and that any infringement of these rights would impair the vital needs of Poland.[29]

But of equal importance to future peace were the contents of a note sent by the Russian Government to the Allied Powers, in which it proclaimed as non-valid any decision regarding the future status of Memel, taken without the consent of the Soviet Government; and protesting against the granting of special privileges and of administrative functions to the League of Nations in all matters concerning Memel and the Niemen River. The note concluded with the observation that the Soviet Government sees in the plan, having as its object the forcing upon Lithuania of a decision in the Memel question to accept the definition of the boundaries by third parties, *i.e.* the League of Nations, not only a violation of the interests of the Soviet Union, but also an attempt against the right of Lithuania to national self-determination and independence. At the same time, the Russian Government protested to Lithuania that it was a violation of the Treaty of Moscow for Lithuania to invite a third party, without the consent of Russia to settle questions of its frontiers.[30]

COMMENTARY

The leading events in the Memel Controversy may be summarized as follows:

(1) The territory of Memel was taken from Germany on the theory that Lithuania needed a port. (2) Lithuania was not at the time recognized by the Allied Powers, so they kept the territory and established a local government under a Directorate and placed the administration of the territory under a French High Commissioner. (3) In December, 1922, the Allied Powers recognized Lithuania *de jure* but did not give the port to Memel. (4) Lithuania petitioned the Allied Powers for this territory, but no action was taken. (5) Lithuania did not request the League to intervene; but as the result of an insurrection which occurred in January, 1923, it took forcible possession of Memel and estab-

[29] London *Times*, March 19th, 1924.
[30] London *Morning Post*, March 13th, 1924.

lished a provisional Government. (6) The Allied Powers, caught in a trap of their own making, threatened and blustered; they sent a commission; they sent gunboats; they sent notes and emissaries, but they could not make war or use force without stultifying their own decision of 1919 to give Lithuania a port. (7) Finally, they set forth six conditions under which Lithuania would be given sovereignty over Memel. (8) Lithuania accepted *in principle*. (9) The Conference drafted a convention, in co-operation with Memel and Lithuanian delegations, but the Lithuanians declined to sign it and went home. (10) The Conference then remodelled the draft statute to suit themselves and sent it to Lithuania with an ultimatum to sign it within a month. (11) That draft statute required Lithuania to make peace with Poland, to reopen the Niemen River to that country and to give the Polish Government a place in administering the harbor. (12) Lithuania considered itself at war with Poland, never having recognized the Vilna award, and maintained an army on the closed frontier. (13) Lithuania astonished the world by declining the draft statute and sent alternate suggestions and recommended an appeal to the Permanent Court. (14) The Conference ignored the judicial body and substituted a political body—the Council of the League—to settle the dispute.

The Allied Powers were thus brought to an exercise of justice by this little, courageous country. The reasons for this signal achievement appear to be (1) The Allied Powers could not very well use arms to prevent the fulfillment of their own promise. (2) Great Britain would not consent to the use of force against Lithuania. (3) The establishment of a Lithuanian currency on a par with American dollars strengthened the Lithuanian hold over Memel, while it weakened the Polish influence, the Polish mark being several hundred thousand to the dollar at that time.

The principals, being unwilling to compromise and unable to make war on their own promise, turned to their agent, the Council of the League, and it performed its duties as agent extremely well, in the following respects: (1) It ignored and minimized the facts of the insurrection, thereby attracting as little attention as possible to the proscrastination of the Allied Powers and its result in the use of arms. (2) It partially placated Poland by giving to it the rights it demanded in fact, if not in name, with the exception of a position in administering the Harbor Board. (3) It gave to Lithuania the ostensible fruits of its victory and a limited sovereignty over the territory and a measure of control over the port.

But its real service to its principals was in that it secured the pay-

ment of reparations to them; left the way open for them to delay ratification until any conditions they impose are fulfilled, retaining title until such time; and finally fixing the control of the Allied Powers through the Council, since that body acts in case of infractions and no modification can be made in the powers of the Harbor Board or in the control of transit without the approval of the Allied Powers on the Council.

It is therefore useful for the Allied Powers to have an agency with moral sanctions when they deem it inexpedient to use military sanctions. Memel is an international port under conditions eminently satisfactory to the Allied Powers, although through the Conference reverberates the protest of a disappointed Polish Government which hoped for a repetition of Vilna.

Nevertheless, as a procedure in the settlement of disputes, this indicates an advance over that followed in 1921 with regard to Poland in the following respects: (1) The Memel Commission appointed was a civilian not a military Commission, headed by a *bona fide* neutral, not by a chairman sympathetic to Polish interests; it made an investigation on the spot, consulted and heard all parties to the controversy, and the chairman was given freedom to contend for the acceptance of his report, which apparently was not prepared in consultation with the various foreign offices. The method adopted was in every way an achievement over the *rapporteur* system and illustrates the advantage which citizens of the United States possess in rendering such services when their government is not bound by the terms of the Covenant and when they act independently of the interests of foreign offices.

The settlement itself was unfortunately marred by the fact that the League becomes a beneficiary under the terms of its own settlement and enters the domestic affairs of the port; and by the fact that the concessions were taken mostly from a small state which was fully entitled to the port without the restrictions imposed upon it. While justice could not have been done without awarding the sovereignty of the port of Memel, it is also unfortunate for future peace that the controversy adds another to the list of conspicuous successes won by the initial application of military force.

Memel offers an illustration of the necessity of dealing with questions by juridical methods where the interpretation of an agreement, (as that of February 16th, 1923); the right of intervention by third parties (Poland); and the essentials of sovereignty (Lithuania); may be determined by the application of law and the rules of equity, and not by political pressure and specious sentimental appeals, designed to

secure a settlement at any price regardless of the ethical foundation upon which it may rest. For the unalterable, simple and outstanding fact remains: Memel was taken from Germany to give Lithuania a port. That promise was not kept until Lithuania, by force, compelled the Allied Powers to make good their word. The final settlement, involving a Convention and three Annexes, is typical of the vast amount of international paper now being used to cover the nationalist ill will and sense of distrust existing in the relationship of states.

CHAPTER XIII

SELF-DETERMINATION IN THE AALAND ISLANDS

The Aaland Islands are a group, consisting of one main island and about 300 smaller ones, lying in the Baltic Sea at the mouth of the Gulf of Bothnia. Separated from Sweden only by the narrow "Aaland Sea," and linked to Finland by a chain of small islands and rocks, this group is of enormous strategic importance to both countries. The main island of the group is close enough to Sweden to form a base for an attack on the Swedish capital, Stockholm, while Finland can easily be reached from the main island, as the shallow sea between the rocks and islands is frozen for several months. The main island has a population of 16,000, while about 10,000 more are scattered over the others; the whole group covers about 1,400 square kilometers. Over 95 per cent of the inhabitants are Swedes.

Until the seventeenth century the group was joined periodically, and from then to the nineteenth century, definitely, to the administration of Finland, which, at the time, constituted a part of the Kingdom of Sweden. During the eighteenth century, the rise and rapid development of Russia led to wars with Sweden, over supremacy in the Baltic Sea. Finland and the Aaland Islands were continually fought over until, in 1809, Sweden definitely ceded these territories to Russia, and they remained under Russia until 1917. In 1856, Russia concluded a Convention with France and Great Britain, binding itself not to fortify the Islands, or to create any naval or military establishments.

The controversy over these Islands was among the first submitted to the League of Nations. While its contribution to the prestige of the League is generally known and generously relied upon as a bulwark of success, few of the many who keep its memory alive, are aware of what transpired or of the issues involved; nor do they appreciate that the settlement itself was of small moment compared to the principles it set forth and the precedents it established. The following narrative concerns these principles and precedents.

THE AALANDERS SEEK SELF-DETERMINATION

When Finland declared its independence in November, 1917, the Aalanders lost no time in declaring their desire to become reunited with Sweden. During the century or more when they were under Russian domination the people of the Aaland Islands remained Swedish in

language, in tradition, and in patriotism. They desired this reunion because they were not in sympathy with the revolutionary tendencies of the Finnish Government; they saw in Sweden the guardian of their customs, traditions, and their language. They feared that Finnish domination would lead to their denationalization and to the absorption of their population which had remained free from mixture.[1]

They never faltered in their efforts. On August 20th, 1917, residents of the Aaland Islands Assembly, at Finström, expressed the desire to be reunited with Sweden. They selected four delegates to notify the Swedish Parliament, and in December, 1917, a petition signed by more than 7,000 men and women in favor of such reunion was addressed to the King of Sweden. On February 3rd, 1918, a deputation presented this petition.

In November, 1918, the Executive Committee of the popular representative body of the Aaland Islands, the Landsting, addressed a communication to the Principal Allied Powers and to the United States asking that a plebiscite, under the control of an impartial authority, be held to determine the wishes of the inhabitants. In January, 1919, the Aalanders sent a delegation to the Peace Conference. They presented a memorandum stating their desire to be united to Sweden; and asked for the organization of a new plebiscite, the results to be binding upon both Finland and Sweden. In May, 1919, the Peace Conference created a special Commission on Baltic Questions. On August 4th, 1919, the Swedish delegates were invited to present their point of view. M. Clemenceau, on September 28th, 1919, expressed publicly his hope that the Islands would be restored to Sweden.

The Commission, however, recommended that the Supreme Council maintain the neutrality of the Islands and leave the task of deciding their sovereignty to the League of Nations. About this time, the Finnish Government granted a certain degree of autonomy to the Aalanders, passing a bill in the Finnish Parliament which freed the population from military service and replaced it with lighthouse and pilotage services. This concession, however, did not deter the Aalanders from continuing their agitation for reunion with Sweden. Finland, however, opposed this movement on the part of the population and despatched troops to the Islands; and in January, 1920, the President and other members of the Landsting were arrested for high treason. This action precipitated the issue. The people claimed their right to hold a plebiscite, based on the right of a people to determine their own destinies.

[1] For detailed account of petitions of the Aalanders, see *Official Journal, Special Supplement* No. 1; pp. 17–20.

Finland refused to recognize this right. Sweden sympathized with the Aalanders, and the feeling between Finland and Sweden caused Great Britain to intervene. It will be observed that the desire of the people was unquestionably in favor of reunion with Sweden, as indicated by the various plebiscites held and demanded, by the petitions sent to Sweden, by the refusal to accept Finnish overtures, by the Commission sent to the Peace Conference, and by the communications with the League and with the United States.

GREAT BRITAIN APPEALS TO THE LEAGUE

On June 19th, 1920, Great Britain, which had an interest in these Islands for their highly strategic position, submitted the matter to the Council of the League of Nations in the following communication from the Foreign Office:[2]

"I desire, in exercise of the friendly right conferred by Article 11 of the Covenant of the League of Nations, to bring to the attention of the Council of the League the case of the Aaland Islands, as a matter affecting international relations, which unfortunately threatens to disturb the good understanding between nations upon which peace depends.

"I do not take this step without having informed the two Governments of Sweden and Finland of my intention to do so."

On July 9th, 1920, the Council convened in London, under the Presidency of Lord Balfour, to consider the controversy which involved primarily the question of self-determination. The Swedish Government presented a memorandum in which it stated the question to be as follows:[3]

"That the Aaland Islands population shall be allowed to determine immediately by plebiscite whether the Archipelago shall remain under Finnish sovereignty or be incorporated with the Kingdom of Sweden."

The Finnish Government opposed this method of solving the question, on the ground that it was a domestic affair; and that the economic and military security of Finland depended upon the retention of the Islands. It stated that the separation of the Islands would prejudice the very existence of the Finnish Republic and that the Aalanders were not living as an oppressed people under Finnish laws. On these grounds, Finland held that the principle of self-determination could not be applied to the present question; but that it was prepared to agree to an arrangement which would guarantee the effective neutrality of these Islands. The Finnish Government then challenged the com-

[2] *Official Journal*, July-August, 1920; p. 250; *Ibid.*; p. 248.

petence of the Council to deal with this matter, in a note, dated July 9th, 1920, in which it stated that while it respected the authority of the Council, there was in the present instance no war nor threat of war and the crisis was of a domestic nature. The note closed with the following paragraph:[4]

"The Government of Finland, having given the most liberal solution to the Aaland question and accorded the widest autonomy to this Archipelago, cannot understand how in these circumstances there can be any question, as far as it is concerned, of a threat of war; nor on the other hand, how an internal question relative to the protection of ethnical minorities could, by the desire of a third party, be transformed into an international question. The Government of Finland would most respectfully point out to the Council of the League of Nations, with reference to Article 15, paragraph 8 of the Covenant, that this 'dispute arises out of a matter which by international law is solely within the domestic jurisdiction' of Finland."

THE COMMITTEE OF JURISTS

Finland, having questioned the competence of the League of Nations, the Council decided on July 11th, 1920, to appoint a Committee of Jurists to examine and give an advisory opinion on two questions: [5]

"(1) Does the Swedish case, as presented by the Council, on the question of the Aaland Islands, arise out of a matter which by International Law is solely within the jurisdiction of Finland, within the meaning of paragraph 8 of Article 15 of the Covenant?

"(2) What is the present state of the International obligations regarding the demilitarization of the Aaland Islands?"

Lord Balfour then appointed a Committee composed of the following jurists: Prof. F. Larnaude, Dean of the Faculty of Law of the University of Paris; Prof. A. Struycken, Councillor of State of the Netherlands; and Prof. Max Huber, Legal Adviser of the Swiss Political Department.[6]

With regard to the question of competence, the Committee reported as follows:[7]

"(1) The dispute between Sweden and Finland does not refer to a definitive established political situation, depending exclusively upon the territorial sovereignty of a State.

"(2) On the contrary, the dispute arose from a *de facto* situation caused by the political transformation of the Aaland Islands, which transformation was caused by and originated in the separatist movement among the

[4] *Official Journal, Special Supplement* No. 1; p. 14.
[5] *Official Journal,* July-August, 1920; p. 249.
[6] *Official Journal, Special Supplement* No. 3; p. 3.
[7] *Ibid;* p. 14.

inhabitants, who quoted the principle of national self-determination, and certain military events which accompanied and followed the separation of Finland from the Russian Empire at a time when Finland had not yet acquired the character of a definitively constituted State.

"(3) It follows from the above that the dispute does not refer to a question which is left by International Law to the domestic jurisdiction of Finland.

"(4) The Council of the League of Nations, therefore, is competent, under paragraph 4 of Article 15, to make any recommendations which it deems just and proper in the case."

It will be observed that the Committee held the dispute to be international on the ground that Finland had not yet acquired the character of a definitively constituted State; as was shown by the separatist movement among its inhabitants and by the military expeditions of Sweden to relieve the inhabitants, terrorized by Russian soldiers, and by the occupation by a German squadron of some parts of the Aaland Islands.

The Committee of Jurists, through its opinion that the question was international, gave the Council jurisdiction and authority to make a recommendation. Had it rendered an opinion that the question was domestic, the Council, under the Covenant, would have been estopped from making such recommendation.

When this report came before the Council for adoption, on September 20th, 1920, the Finnish Government sent what amounted to an ultimatum, in a declaration, reading as follows:[8]

"The Council has declared its competence to examine the question of the Aaland Islands without the representatives of Sweden and Finland having taken part in the vote.

"According to the terms used by the President of the Council and the *Rapporteur*, this declaration of competence does not prejudge in any way the fundamental question at issue. I have the honour to declare that my Government cannot accept any other interpretation of the words of the President of the Council than the following:

" 'The Council, in declaring itself competent, does not intend to prejudge in any way the statements contained in the Report of the Jurists, which I have contested in numerous observations. My acquiescence in the procedure to be followed by the Council is accordingly accompanied by an express stipulation that my Government reserves to itself the right, in prosecuting the case, to uphold the point of view it has from the first maintained, namely, that the legitimate interests of Finland are bound up with its right of sovereignty over the Aaland Islands, and that consequently Finland alone is entitled to take a decision on the subject of a plebiscite.' "

[8] *Official Journal*, October, 1920; p. 392.

On September 29th, 1920, it confirmed this ultimatum in the following communication to the Council:[9]

"The Finnish Government declares, therefore, that it is unable to consider at any time whatsoever a recommendation of the Council of the League of Nations, the direct or indirect result of which would be to deprive Finland of its right of sovereignty over the Aaland Islands."

Finland, not then a member of the League, was not under the obligations of a member state and apparently had accepted jurisdiction without the terms of Article 17 being invoked. In the meantime, the Soviet Government, on July 1st, 1920, had informed the Council that no decision concerning the future of these Islands would have any value without its consent.[10]

THE COMMISSION OF RAPPORTEURS

The League of Nations thus found itself in a dilemma. It was adjudged competent by a Committee of Jurists; Finland, backed by Russia, stated in advance that it would not accept a decision which deprived it of sovereignty over the Islands; whereas the Council had acquired jurisdiction on the basis of a decision questioning that sovereignty. If it called Finland's "bluff," the question would not be settled; if it yielded to Finland's demand, it would lose its jurisdiction and be unable to make a recommendation. In either case, the League had itself and its future to consider. In view of the situation, the Council passed a resolution on September 20th, 1920, declaring itself competent and authorized itself to appoint a commission of inquiry charged with the duty: [11]

"to furnish the Council in the shortest time required for the necessary consultations, and having regard to the legitimate interests of all parties concerned, with a report which will enable it to frame a final or pro-

[9] *Official Journal,* January-February, 1921; p. 78. For statement of objections raised by Finland to the report of the Committee of Jurists; *Ibid.;* p. 66.

[10] The part taken by the League in settling this dispute has been heralded as a great event and the inference permitted that its settlement prevented war. Neither Finland nor Sweden has admitted that there was a threat of war. In justice to the Permanent Court of Arbitration, it should be pointed out that this dispute was of the order of controversies which the Court had been adjusting for many years; also, had the League not intervened with *rapporteurs,* and committees which disagreed, the dispute might have been permitted to take a judicial instead of a political course. Furthermore, courts of arbitration appear to possess an advantage over the Council, as demonstrated in this instance, in that neither individuals nor states have acquired the habit of intimidating such courts when their cases are under adjudication.

[11] *Official Journal,* October, 1920; p. 396.

visional settlement of the question and to establish conditions favorable to the maintenance of peace in that part of the world."

In accordance with this resolution, the following Commission was appointed: Baron Beyens, former Minister of Foreign Affairs for Belgium; M. Calonder, former President of the Swiss Confederation; and M. Ferraris, Senator, Italy.[12] It was suggested that an American be invited to serve on the Commission and through the American Embassy in Paris, the United States Government was approached. Mr. Abram I. Elkus, former Ambassador to Constantinople, was appointed as the American member. This Commission heard the representatives of the interested parties and personally investigated such of the conditions in Finland, Sweden and the Aaland Islands as related to the controversy. In April, 1921, the Commission of *Rapporteurs* rendered its report.

THE REPORT OF THE COMMISSION OF RAPPORTEURS

The Commission was of the opinion that Finland's right of sovereignty was incontestable and that to deprive Finland of the Islands would be depriving it of a part of its rightful possession. At the same time, it was of the opinion that the principle of self-determination should not apply to this case, for the reasons that the Swedish population of the Islands was but a small part of the Swedish population of Finland as a whole; that the opposition of many Swedes in Finland would be adversely influenced by the separation of the Islands from Finland; that, moreover, the dangers of which the Islanders complained were not the result of a policy of oppression on the part of Finland; that the Islands had not the necessary capacity of surviving as an independent state; and that a transitory settlement, to be followed by a subsequent plebiscite, would but continue the causes of friction.

The Commission was further of the opinion that all of the difficulties complained of by the Islanders could be met, if Finland added certain essential guarantees to the law of autonomy voted in favor of the Islands on May 7th, 1920. These guarantees proposed as follows: The compulsory instruction in Swedish and the exclusion of Finnish in the primary and technical schools; the right of priority in favor of the inhabitants on every occasion when offers of purchase of property were made by persons or a company foreign to the Island; the right of franchise for strangers to be limited to those who have been residents in the Islands for five years; and the provision that the General Council of the Islands may nominate a list of three candidates from whom the

[12] *Official Journal,* November-December, 1920; p. 86.

Government of Finland shall select the Governor of the Islands; all of these rights to be guaranteed by the League of Nations.[13]

On the question of self-determination, the Commission said:[14]

"To concede to minorities either of language, or religion, or to any fractions of a population, the right of withdrawing from the community to which they belong, because it is their wish or their good pleasure, would be to destroy order and stability within states and to inaugurate anarchy in international life; it would be to uphold a theory incompatible with the very idea of the state as a territorial and political unity."

It seems also that the Commission was of the opinion that the League should reward Finland for its services during the war, for it stated that the services which Finland had rendered in repelling the attacks of Bolshevists deserved some reward, and the Commission thought "it would be an extraordinary form of gratitude toward the Finnish Republic to wish to dispoil her of territory to which she attaches the greatest value."[15]

From this report, the following significant items appear: (1) Finland's right of sovereignty was deemed to be incontestable; in direct disagreement with the position taken by the Committee of Jurists. (2) This made the question domestic and not international, thereby revoking the right assumed by the Council, to make a recommendation; (3) Otherwise, the precedent would be established of the right of the Council to interfere in domestic affairs, in violation of paragraph 8 of Article 15. (4) The principle of self-determination was denied upon a numerical basis benefiting Finland, and upon the ground that Finland would be adversely influenced by the separation; it was also stated that since there was no oppression, the Aalanders should be content, that the Islands might find it difficult to survive as an independent state, and that a plebiscite would be a cause of friction.

This report seems to dispose effectually of Point 5 of the Fourteen Points reading as follows:

"A free open-minded and absolutely impartial adjustment of all colonial claims based upon a strict observance of the principle that in determining all such questions of sovereignty the interests of the population concerned must have equal weight with the equitable claims of the Government whose title is to be determined."

But even more significant was the principle laid down that the League was to be a vehicle through which rewards for war services

[13] Report of the Commission of *Rapporteurs;* p. 32.
[14] *Ibid.;* p. 28.
[15] *Ibid.;* p. 30

were to pass; and that sovereignty over the Aaland Islands should be in the nature of such a reward.[16]

Finally, to console the Aalanders, they were assured of the continuance of the Swedish language, the prior right to purchase real property and a voice in the selection of a Governor; these guarantees being placed under the League.

This report deserves scrutiny in one other particular. The Commission laid down the principle that for the League to concede the right of a minority to withdraw from a community to which it belongs would be to uphold a theory incompatible with the very idea of the state. Neither the Covenant nor any of the Minority Treaties gives to the Council the right to promulgate any principles concerning the activities of minorities within the territory of a state.[17] On the contrary, the desire of a people to separate from its state is a matter of domestic policy. Were it not so, the League would be free to take a hand in revolutions, rebellions and uprisings by which people free themselves and create new states.[18]

THE AWARD AS TO SELF-DETERMINATION

On the basis of this report, the Council on June 24th, 1921, passed the following resolution:[19]

"1. The sovereignty of the Aaland Islands is recognized to belong to Finland;

"2. Nevertheless, the interests of the world, the future of cordial relations between Finland and Sweden, the prosperity and happiness of the Islands themselves cannot be ensured unless (a) certain further guarantees are given for the protection of the Islanders; and unless (b) arrange-

[16] This political influence admitted by the Commission to exist disregarded one of Mr. Wilson's Four Principles, namely, that territorial settlement must be made "in the interest and for the benefit of the populations concerned, and not as a part of any mere adjustment or compromise of claims amongst rival states."

[17] Chap. III; p. 70.

[18] The Committee of Jurists also rendered an opinion upon minorities which, in part, was as follows:

"The fact must, however, not be lost sight of that the principle that nations must have the right of self-determination is not the only one to be taken into account. Even though it be regarded as the most important of the principles governing the formation of States, geographical, economic and other similar considerations may put obstacles in the way of its complete recognition. Under such circumstances, a solution in the nature of a compromise, based on an extensive grant of liberty to minorities, may appear necessary according to international legal conception and may even be dictated by the interests of peace." (*Official Journal, Special Supplement* No. 3; p. 6.

[19] *Minutes of the Thirteenth Session of the Council;* p. 42.

ments are concluded for the non-fortification and neutralization of the Archipelago.

"3. The new guarantees to be inserted in the autonomy law should specially aim at the preservation of the Swedish language in the schools, at the maintenance of the landed property in the hands of the Islanders, at the restriction, within reasonable limits, of the exercise of the franchise by newcomers, and at ensuring the appointment of a Governor who will possess the confidence of the population.

"4. The Council has recognized that these guarantees will be more likely to achieve their purpose, if they are discussed and agreed to by the Representatives of Finland with those of Sweden, if necessary with the assistance of the Council of the League of Nations, and, in accordance with the Council's desire, the two parties have decided to seek out an agreement. Should their efforts fail, the Council would itself fix the guarantees which, in its opinion, should be inserted, by means of an amendment, in the autonomy law of May 7th, 1920. In any case, the Council of the League of Nations will see to the enforcement of these guarantees.

"5. An international agreement in respect of the non-fortification and the neutralization of the Archipelago should guarantee to the Swedish people and to all the countries concerned, that the Aaland Islands will never become a source of danger from the military point of view. With this object, the Convention of 1856 should be replaced by a broader agreement, placed under the guarantee of all the Powers concerned, including Sweden. The Council is of opinion that this agreement should conform, in its main lines, with the Swedish draft Convention for the neutralization of the Islands. The Council instructs the Secretary-General to ask the Governments concerned to appoint duly accredited representatives to discuss and conclude the proposed Treaty."

In accepting this resolution, M. Branting (Sweden) registered the following protest with the Council:[20]

"The Swedish Government had hoped that an institution, which was established to assist in the realization of right in international relationships, would have favoured a solution of the Aaland question in conformity with the principle of free self-determination, which, although not recognized as a part of international law, has received so wide an application in the formation of the New Europe. It had hoped that the Aalanders would not be refused the rights which have been recognized in respect of their Slesvig brothers, who belong, as do the Aalanders, to the Scandinavian race.* * *

"The Swedish Government is not of the opinion that the settlement of the Aaland question which is suggested by the Council is likely to confer upon the Baltic area the peace that is desired. Nor yet is it of opinion that a population as homogeneous as that of the Aaland Islands, of whose wishes so little account has been taken, can add to the strength of a country to which it is attached against its unanimous desire."

In view of this decision and other circumstances in which the Swedish representatives had not met with success, M. Branting, in addressing

[20] *Minutes of the Thirteenth Session of the Council;* p. 43.

the Assembly on September 8th, 1921, made some observations to the following effect:[21]

(1) That the decisions of the Council have been dictated by considerations which should not have been allowed to influence it. (2) That its decisions have sometimes produced the impression that they had been prepared and agreed upon, not at actual meetings, but elsewhere. (3) When a member of the League not represented on the Council sends a representative to sit during the discussion of a dispute, in accordance with Article 4, he is not permitted to take part in decisive discussions but finds himself like one arraigned before a tribunal. (4) That the publicity sought by the Assembly in a resolution passed in 1920, has not achieved the desired result as in several important cases the reasons for the resolution have not been given.[22]

It will be observed that the *legal* question of whether the dispute was domestic or international was decided against Finland by the Committee of Jurists and for Finland by the Commission of *Rapporteurs,* illustrating the difference between the juridical and political concepts. This method of referring to a committee of its own choice the question of the competence of the Council is profoundly unsatisfactory since the opinion admits of neither judicial review nor appeal. It was pleaded at the time that this procedure was adopted because the Permanent Court was not yet organized.[23]

It will be observed further that, in the conduct of this dispute, the Council accepted the report of its legal committee and recognized the separatist movement among the Aalanders in order to declare the controversy international and acquire jurisdiction; it then accepted a report from its *political* commission, which declared there had never been any question of the sovereignty of Finland. But instead of fol-

[21] *Records of the Second Assembly;* p. 59.

[22] Recognition of its imperfections has not proved to be one of the strong characteristics of the League, and the triumph of law has not been conspicuous. As a result, each year in the Swedish Parliament there is agitation in favor of the withdrawal of Sweden from the League of Nations. Discontent with its failure to enact any of the amendments proposed by Sweden is one alleged foundation. Premier Grygger, at a meeting of the Swedish Riksdag, the end of May, 1924, said: "The League of Nations can never dispose of the political power needful to ensure the liberty of disarmed nations. For Sweden, membership of the League betokens an increased risk of war." (*Manchester Guardian Weekly,* June 6th, 1924.)

[23] The sincerity of this plea was impugned in the Italo-Greek dispute in 1923, when the resulting questions were referred not to the Court but to a Commission of Jurists; and again in 1924, when the question of whether the League has a right to protect Danzigers in Poland was referred to a Commission of Jurists. (See page 145.)

lowing the provisions of Paragraph 8, Article 15 of the Covenant, which prohibit it from making recommendations in domestic affairs, the Council proceeded to make recommendations which extended to the domestic affairs of Finland, going so far as to deal with matters of education and rights of property and the franchise, which rights are nowhere conceded by any state to be a matter of international concern.[24] At the same time it accepted a report which laid down a principle with regard to the rights of people to secede from their own governments, thus extending its influence into fields of rebellion from which the Council is clearly excluded under Minority Treaties.[25] The Council then proceeded to establish itself as the guarantor of the domestic rights concerning education, the franchise, and property rights which it believed could be internationalized by a mere resolution. Finland, backed by Russia, delivered an ultimatum which imperilled the prestige of the Council in that it faced either failure or capitulation. The capitulation followed in a direction where Finland could well afford to make certain concessions, having retained sovereignty. The settlement, however, creates a precedent inimical to the principles of sovereignty.

DEMILITARIZATION OF THE AALAND ISLANDS

In connection with the recommendations of the Baltic Commission, appointed by the Peace Conference, the question arose whether the provisions of the Convention of 1856 were still in force, since they had been broken by Russia. The Council took up the consideration of this question and referred it to the same Committee of Jurists who rendered an opinion upon the previous matter. It reached the following conclusion:[26]

"(1) The provisions of the Convention and Treaty of Peace of 30th March, 1856, concerning the demilitarization of the Aaland Islands are still in force.

"(2) These provisions were laid down in European interests. They constituted a special international status relating to military considerations, for the Aaland Islands. It follows that until these provisions are duly re-

[24] In its resolution the Council intimated that this disregard of the Covenant was justified by "the interests of the world, the future of cordial relations between Finland and Sweden and the prosperity and happiness of the Islands." Were the United States Constitution to be deliberately violated and justified upon such grounds, it would not long command the confidence of its people, nor would it remain an instrument of justice when its integrity had been worn away.

[25] Chap. III; p. 77, for rule of Council refusing to receive petitions from minorities desiring to secede.

[26] *Official Journal, Special Supplement* No. 3; p. 19.

placed by others, every State interested has the right to insist upon compliance with them. It also follows that any State in possession of the Islands must conform to the obligations, binding upon it, arising out of the system of demilitarization established by these provisions."

This question was referred also to the Commission of *Rapporteurs* which found that the restrictions imposed by the Treaty of Paris had been shown to be inadequate, by the action of Russia during the war; it suggested the negotiation of a treaty in which Finland, Sweden, Germany, Denmark, France, Great Britain, Italy, Poland and Russia should join; and rejected the settlement of any question by plebiscite. It was suggested that this treaty be negotiated under the auspices of the League and that the League should assure its execution; and in case of war, the parties to the treaty should intervene at the request of the League to enforce respect for the treaty.

The Council accepted the conclusions of the Commission and on January 24th, 1921, it recommended that such an international convention be held and it called together the nations mentioned, together with Latvia and Esthonia, upon the suggestion of Great Britain. On October 20th, 1921, the Convention was signed at Geneva. The provisions in brief are as follows: Article 1 confirms the declaration of Russia of 1856. Article 2 defines the Aaland Islands and territorial waters. Article 3 prohibits the maintenance of any military or naval establishment. Article 4 prohibits any military, naval or air force of any Power from entering or remaining in the zone described in Article 1 and prohibits the manufacture, importation and exportation of arms and war material. Article 5 allows warships the right of passage through territorial waters. Article 6 provides that the zones shall in time of war be neutral but in wars affecting the Baltic States, Finland may protect the neutrality by mines and measures strictly necessary upon notification to the Council. Article 7 provides that the parties to the Convention shall communicate with the League with a view to the Council maintaining the Convention and repressing violations and shall assist the Council in the measures which it may recommend. In case of failure to reach unanimous agreement, each of the parties is authorized to take the action recommended by the Council when taken on a two-thirds vote, exclusive of the Power accused of being the aggressor. In case of a sudden attack, Finland may repulse the aggressor while waiting for the others to arrive, reporting such action to the Council. Article 8 continues the Convention, irrespective of changes in the *status quo* of Baltic Powers. Article 9 authorizes the Council to bring the Convention to the attention of its members and provides

that it may be signed by other parties, upon unanimous approval of the signatories. Article 10 provides for ratifications which were signed by representatives of Denmark, Finland, Sweden, France, Great Britain and Germany and by the Secretary-General of the League of Nations on April 6th, 1922. Italy, Poland, Latvia and Czechoslovakia signed at later dates.[27]

It will be observed that the League continues the policy of demilitarization established by the Principal Powers in 1856.

COMMENTARY

This dispute involved a few thousand people in a remote part of the world; but the effect of the settlement of the dispute, in relation to the aspirations of a small people toward self-determination, and in the rights of minorities to seek freedom, is of universal interest.

The Council of the League settled the Aaland Islands dispute, as has been claimed; that the dispute would have been the subject of war between Finland and Sweden nowhere appears from the record. On the contrary, the demilitarization of the Islands, having lapsed, caused real concern to Great Britain in its policy of supremacy of the seas and caused that government to intervene. France favored the adherence of the Islands to Sweden, while Great Britain favored a different policy. The real difference of opinion, therefore, was between these Powers, with demilitarization the objective and sovereignty a secondary consideration.

The policy, therefore, of security against war rather than that of justice prevailed, and in that quest there was sacrificed the aspirations of a little people to self-determination because the entrance to the Gulf of Bothnia is more important than the happiness of the people who occupy the Islands. There was also sacrificed the integrity of the Covenant; for the Council asserted its competence to decide the question upon international grounds, and then disregarded the first opinion in order to make recommendations concerning domestic affairs; creating among states apprehension for the safety of their domestic rights under so elastic an interpretation. There was also revealed the Council as a seeker after authority and power and not unwilling to become a beneficiary under its own decision—a practice from which the Permanent Court of Arbitration has been free, and to which body this question could properly have gone. The dispute marked the installation of the practice of resorting to commissions of jurists instead of duly con-

[27] *Am. J. of Int. Law,* January, 1923; p. 63. "The Neutralization of the Aaland Islands," by Charles Noble Gregory.

stituted courts for legal opinions—a practice since followed in other disputes.

The Aaland Islands decision is undoubtedly a cornerstone in the success of the League, but its contribution to the cause of justice and support of the principle of self-determination are less recognizable. The Aalanders must, therefore, continue to live under alien rule even though they are under the protection of the League as a demilitarized zone, and seemingly might enjoy independence by reason of that fact.

CHAPTER XIV

FRONTIERS OF HUNGARY

The Kingdom of Hungary comprised Hungary and Transylvania, Croatia-Slavonia and the Free City of Fiume. The country was surrounded by natural boundaries, the Carpathian Mountains on north and east and the rivers Save and Danube on the south. The population numbered nearly 20,000,000, over 9,000,000 of whom were Hungarian, the others chiefly Roumanian, Croat-Slovene, Slovak and Serbian. The Hungarians, conquering the country in the 9th century, broke up a Slav kingdom into Slovaks in the north and Croat-Slovenes in the southwest. In the 15th century the Turks, spreading north, on the Balkans caused hordes of Serbian and Wallachian (Roumanian) fugitives to seek refuge in Hungary; the remainder of these now occupy southern Hungary and Transylvania. In the 16th and 17th centuries Hungary was torn into three parts, the south and center being held by the Turk, the western section by the Habsburg Emperors, while in the east the Transylvania Dukes fought the Emperors and the Turk alternately. The country was liberated from the Turk at the end of the 17th century, only to become part of the Habsburg Empire and spend nearly 200 more years defending its independence and constitution. (This constitution dates from the 13th century and resembles the Magna Charta of Great Britain.) After a revolution in 1848-9 and ensuing compromise with the Habsburg dynasty, the country developed peacefully and rapidly.

Article 27 of the Treaty of Trianon surrounded Hungary with a ring of new frontiers—frontiers that were to take from the country two-thirds of its territory and 3,500,000 of its Hungarian population. Hungarian protests succeeded in obtaining one concession from the Allied Powers. In a note of May 6th, 1920, to the President of the Hungarian Delegation to the Peace Conference, M. Millerand, on behalf of the Allied Powers, stated:[1]

"The Allied and Associated Powers, without departing from the views held by them when tracing the frontiers fixed by the Treaty, have nevertheless taken into consideration the possibility that the frontier line thus traced may not exactly correspond throughout its length to ethnological or economic requirements.

"An enquiry on the spot may perhaps reveal the necessity for altering certain parts of the frontier line provided for in the Treaty. The holding of such an enquiry at the present time would involve indefinite delay in the

[1] *Official Journal,* November, 1922, II; p. 1426.

conclusion of a peace which the whole of Europe desires. Should, however, Delimitation Commissions, when they have begun their work, consider that the provisions of the Treaty involve, as suggested above, an injustice at any point which it would be to the general interest to remove, they may submit a report on this matter to the Council of the League of Nations. In that case, the Allied and Associated Powers agree that the Council of the League of Nations, if requested to do so by one of the parties concerned, may, under the same conditions, offer its services to obtain by a friendly settlement the rectification of the original tracing in places where the alteration to the frontier is considered desirable by one of the Delimitation Commissions. The Allied and Associated Powers feel confident that this procedure constitutes an appropriate method for removing any injustice in the tracing of the frontier line which may give rise to well-founded objections."

The instructions given to the Delimitation Commission, and approved by the Conference of Ambassadors, on July 22nd, 1920, and June 3rd, 1921, include the following:[2]

"They [the Delimitation Commission] will have full powers, not only as regards the determining of those sections of the frontier which are defined as 'lines to be determined on the ground,' but if one of the States concerned applies for this to be done, and if the Commission considers it desirable, it will further have power to revise sections of the frontier which are defined by administrative boundaries, except in the case of the international frontiers which existed in August, 1914. In regard to these international frontiers the duties of the Commissions will be confined to the verification of the boundary posts or marks. They will even be empowered,—apart from cases in which they are authorized to do so by special provisions—to alter the allocation of localities referred to by name in the Treaty, provided that such alterations are of trifling importance and that the Commission is unanimous on the matter. They will endeavour in all cases to conform as closely as possible to the definitions of the frontier given in the Treaty, taking count as far as practicable of administrative boundaries and local economic interests, but without regard to any national, linguistic or religious considerations." * * *

"The Delimitation Commission should bear in mind that the Council of the League of Nations can only consider reports submitted to it 'if requested to do so by one of the parties concerned.' In order to avoid loss of time the Commissions should, when they send in a report, see that at least one of the Powers concerned addresses without delay a request for mediation to the Council of the League of Nations.

"It is for the Council before actually considering the question brought before it, to decide, in view of the documents quoted above, whether it agrees to consider the question in accordance with the request thus made."

It will be observed, therefore, that: (1) The Delimitation Commissions for the Hungarian Frontier had power to determine not only sections of the frontier defined as "lines to be determined on the ground," but also to revise sections defined by administrative bound-

[2] *Official Journal, March, 1923;* p. 282.

aries and to suggest alterations in localities referred to by name in the Treaty, "provided such alterations were of trifling importance"; (2) the Commissions, when they considered that the provisions of the Treaty involved an injustice, were authorized to submit a report to the Council of the League of Nations; (3) in such case the Allied Powers agreed that one of the parties concerned might appeal to the Council; (4) the Council could then offer its services to obtain by friendly settlement a rectification of the disputed frontier; and (5) the Council could only consider reports submitted, if requested to do so by one of the parties.

THE HUNGARIAN-YUGO-SLAV FRONTIER

The Hungarian Minister of Foreign Affairs, in a note dated November 22nd, 1921, drew the attention of the Secretary-General of the League to certain modifications proposed by the Delimitation Commission. The matter was taken up at a Council meeting on January 13th, 1922, but postponed, owing to the request of the Conference of Ambassadors and of Yugo-Slavia.[3]

At the meeting of the Council on July 19th, 1922, M. Hymans (Belgium) stated the case with reference to the competence of the League. He said: [4]

"The Council had to decide whether it would offer its good offices within the limits laid down in the letter from M. Millerand. It was only competent to suggest alterations in those portions of the frontier which had been modified by the Delimitation Commission, and such alterations could only be effected by agreement between the two Powers concerned. Such modifications, moreover, must not in any way affect the basis of the Treaty of Trianon."

The case, as stated by the representatives of Hungary, was the following: A strip of territory known as Prekomurjé, in the western section of the Hungarian-Yugo-Slav frontier, north of the River Mur, was, according to the report of the Delimitation Commission, to be restored to Hungary; the territory in question was over two hundred square kilometers in area, with about sixteen thousand inhabitants, almost entirely Hungarian. The Hungarian claim—in agreement with the proposal of the Delimitation Commission—was that the northern part of the region was economically dependent on Hungary and the population, cut off by the frontier line, was living in great misery; and that in the southern part a population of pure Hungarian stock was cut off from Hungarian schools and churches.[5]

The Yugo-Slav counter-claims were: (1) The Delimitation Com-

[3] *Official Journal,* February, 1922; p. 101.
[4] *Ibid.,* August; p. 806.
[5] *Official Journal,* August, 1922; p. 914.

mission had investigated this special section without any relation to the rest of the frontier. (2) The Commission was not entitled to consider any claim that would displace the frontier as prescribed by the Treaty. (3) The proposals of the Commission were in conflict with the principles by which the Treaty established the frontier. (4) The Hungarians interpreted the instructions to the Delimitation Commission unilaterally, namely, they were unwilling to agree to any rectification to the advantage of Yugo-Slavia where such changes had been proposed. Accordingly, they asked that the provisional line of Prekomurjé should be finally fixed; and, should any changes be necessary, they should be made on the principle of an exchange of territory by which a district of pure Hungarians would be returned to Hungary in exchange for some villages with Serb and German population, to be given to Yugo-Slavia.[6]

As the Yugo-Slav representative insisted that the modification of the frontier was contrary to the Treaty, and that the Delimitation Commission had misinterpreted M. Millerand's letter, the Council found the way out of a difficult position by passing the following resolution: [7]

"The Council requests M. Hymans, in consultation with the interested parties, and with the assistance of the Secretariat, to present to the Council at its next session a statement on the controversial points involved in the possible exercise by the Council of its good offices to bring about a friendly settlement. The Council appeals to the goodwill of the two parties in order that this preparatory work may have its full effect."

On September 9th, 1922, the Council took the matter up again; the Hungarian and Yugo-Slav representatives both assured the Council that there was hope of arriving at a solution through direct negotiations and an agreement was in effect, reached by the Foreign Ministers of the two countries, but the Yugo-Slav Government did not approve.[8]

New negotiations were started under the auspices of the Council on the basis of exchange of territory; the Council used its persuasive powers—but to no avail. The Yugo-Slav representative explained that the Parliament of his country had ratified the frontier as it stood, and changes would involve disturbances; these were threatening, anyway, he added, as the population had been roused by the news that the Council intended to modify the frontier.[9] The Council finally decided to request the two Governments to come to an agreement within forty-eight hours. At that time the representatives of Yugo-Slavia and Hungary had not agreed. M. Hymans, *rapporteur*, accordingly made a report, summarizing the case as follows:[10]

[6] *Official Journal*, August, 1922; p. 916. [7] *Ibid.*; p. 808. [8] *Ibid.*, November; pp. 1179, 1201. [9] *Ibid.*; p. 1203.

[10] *Official Journal*, November, 1922; p. 1427.

"The Serb-Croat-Slovene State refuses to cede to Hungary the strip of territory known as Prekomurjé, stating that the frontier has been fixed by the Treaty and that this Treaty has been ratified by the Serb-Croat-Slovene Parliament, the consent of which would be indispensable for the sanction of such a considerable alteration. The Serb-Croat-Slovene State has, however, declared itself prepared to cede to Hungary a road crossing the north-western extremity of Prekomurjé, together with a village on that road, on condition that Hungary consents to an exchange of territory in the eastern section of the frontier. This exchange would consist in the cession to Hungary of the commune of Horgos, with 8,000 Magyar inhabitants, on condition that a territory situated to the north of Szabadka, with other villages farther west, should be ceded to the Serb-Croat-Slovene State. This second question is not submitted to the Council. The good offices of the League are only requested for the purpose of 'obtaining by a friendly settlement the rectification of the original tracing in places where an alteration of the frontier is considered desirable by the Delimitation Commission.'"

M. Hymans stated, further, that the Delimitation Commission had not submitted to the Council the rectification proposed by the Yugo-Slav representative, because this would entail important alterations of the line laid down by the Peace Treaty. Hungary was ready to consider the exchange of districts, if Yugo-Slavia accepted the arbitration of the Council in the Prekomurjé district. Yugo-Slavia, however, refused the arbitration of the Council and reduced to nothing the concession to Hungary which might have been made under the Treaty of Trianon.

It will be observed that the Conference of Ambassadors made provision against injustices which it would be of general interest to remove; and the Delimitation Commission found such an injustice. One of the parties concerned appealed to the Council and the procedure prescribed by the Conference was scrupulously followed, yet the Council of the League was incapable of obtaining a friendly settlement; reported this fact to the Conference; and the Conference had the frontier laid down, according to the Treaty of Trianon, together with the recognized injustice.

Three questions arise: Did the League really not have the power, expressly conferred upon it by the Conference of Ambassadors? Had it no alternative but to recognize Yugo-Slavia's refusal to arbitrate? If so, was the provision of the Conference of Ambassadors purposely futile?

THE HUNGARIAN-CZECHOSLOVAKIAN FRONTIER

The above case had a parallel in a frontier dispute which arose under the same provisions of the note of May 6th, 1920, and concerned the Hungarian-Czechoslovak frontier. The frontier line in question

was that of the region of Salgó-Tarján, important for its coal mines. Three members of the Commission (including the chairman) favored rectifying the line and referring the question to the Council, while the other three members held that there were no reasons to change the frontier laid down by the Treaty of Trianon. The vote of the chairman determined the question; Hungary invited the arbitration of the Council and agreed in advance to accept its decision. Czechoslovakia also requested arbitration. The Council took the matter up on January 31st, 1923, having before it the reports of the majority and the minority of the Delimitation Commission, of the Hungarian representative and of the Czechoslovakian representative. The Hungarian representative stated: [11]

"The Commission * * * decided to adopt the entire frontier-line (about 740 kilometres long) as traced in the Treaty, with the exception of an insignificant portion, mainly in the neighborhood of Somosujfalu (Salgó-Tarján), where a small modification was proposed in favour of Hungary. * * * It will be seen that this area is, in its entirety, only 20.5 square kilometres and contains only one village of 1,900 inhabitants, who are of pure Hungarian race. The small rectification proposed by the Commission is laid down in the Treaty itself, which contains a clause that in the area concerned the frontier shall follow 'a line to be fixed on the ground leaving to Hungary the mines of Salgó.' Enquiries, however, showed that the mining district of Salgó extends north beyond the present provisional boundary line. * * * The whole Commission recognized Hungary's right to this area even under the terms of the Treaty."

The area in question contained two communes, Somoskö, on the eastern side, and Somosujfalu, on the west. Two solutions were proposed: Solution 1, to include the maximum area Hungary could expect to acquire, that is, both communes, with territory north of them containing three stone quarries; and Solution 2, the minimum area, leaving to Hungary only one commune—Somoskö, with the two quarries north of it, and giving to Czechoslovakia, Somosujfalu with its important railway station. The Hungarian representative summed up his statement as follows: [12]

"(1) The area mentioned in Solution 2 must be regarded by virtue of the Treaty and also in the opinion of the members of the Commission, as already assigned to Hungary:

"(2) The question in dispute affects only that portion regarding which the two proposed solutions differ * * *

"(3) Accordingly, the Hungarian and Czechoslovak delegates, the two

[11] *Official Journdl,* March, 1923; p. 286.
[12] *Ibid.;* p. 287.

parties concerned, agree entirely and unreservedly to accept the decision given by the Council of the League of Nations."

The chief reasons for which Hungary desired the rectification were: (1) The quarry north of the commune of Somosujfalu would relieve the shortage of stone in Hungary. (2) The land north of Somosujfalu contained coal necessary to Hungary. (3) The mines of Salgó-Tarján provided a livelihood for the inhabitants of Somosujfalu. (4) The inhabitants of the district were purely Hungarian. (5) The railway station of Somosujfalu was essential for the transport of both timber and stone from the district.

The Czechoslovak representative, however, drew attention to the legal aspect of the question,[13] pointing out that the Treaty of Trianon permitted rectifications only when the Delimitation Commission was unanimous. In this instance the Commission had been divided, therefore Czechoslovakia was under no legal obligation to accept any proposals modifying the frontier as laid down in the Treaty. Nevertheless, to prove a conciliatory spirit, the Czechoslovak Government accepted the arbitration of the Council. M. da Gama (Brazil) was asked to make a report. This report was submitted to the Council on April 17th, 1923, wherein the *rapporteur* took up the main points of the Hungarian claims and explained that: [14] (1) Both Schemes 1 and 2 left some quarries to Hungary, and the importance attached to the quarries by Hungary seemed exaggerated, since that country possessed thirty-seven quarries in operation. (2) Both Schemes 1 and 2 left to Hungary "not only the mines in operation, but also the prospective land north of the village of Salgó up to the northern limit of the Commune of Somoskö," although this land, according to the reports of the experts quoted by the Czechoslovak representative, showed no traces of coal or lignite.[15] Two small coal pits south of Somosujfalu were also attributed to Hungary under Scheme 1, although the Czechoslovak member of the Commission had pointed out that these mines were of importance for small industries in the neighboring Slovak district—the annual yield of the mines was only 14,000 tons. (3) The ethnological question as to the purely Hungarian population was undisputed. (4) The lack of timber in Hungary made the forests near Somosujfalu important. These would go to Czechoslovakia, by Scheme 2, but the Czechoslovak representative had pointed out that their yield of timber was not large. (5) The station of Somosujfalu would, by Scheme 1,

[13] *Ibid.;* p. 290. [14] *Official Journal,* June, 1923; p. 632.

[15] The land claimed by Hungary as containing coal is to the west of the commune of Somoskö and was not included in Solution 2.

go to Hungary, but the supporters of Scheme 2 claimed its importance to Czechoslovakia. The *rapporteur* concluded: [16]

"I cannot conclude without a reference to the minor aspects of the problem. The district in question is small, the distance between the lines proposed by Scheme No. 1 and Scheme No. 2 represents an area of only 20½ square kilometres. The two schemes agree as to the attribution of the mines and of the quarries except half of the trachyte quarry. The local interests affected, although worthy of the Council's most sympathetic consideration, do not appear to be very great. Nevertheless, this question has been the subject of burning discussion and has given rise on both sides to very considerable work for more than twelve months. All this work and the strong feelings aroused seem hard to explain; but the arguments used on both sides are influenced by sentiments which the members of the Council, after hearing the parties concerned, will certainly be loth to ignore."[17]

On April 23rd, M. da Gama submitted to the Council a draft resolution "which he had drawn up in consultation with the Military Sub-Committee of the Permanent Advisory Commission of the League.[18] This resolution proposed a frontier line leaving to Hungary both communes and the railway station, and to Czechoslovakia all quarries, with the exception of part of one, lying north of Somoskö. The road from this quarry to the station of Somosujfalu is, however, cut by the frontier and an agreement was necessary to make possible the transport of stone over a bridge, assigned to Czechoslovakia. The territory north of Somoskö, assigned to Hungary, by both Schemes 1 and 2, was halved; the northern part, containing coal, being given to Czechoslovakia. *The net territorial result for Hungary was that it gained part of the disputed section at the price of losing part of its undisputed territory.*

The new frontier was commented on by the Hungarian representative as follows: [19]

"The following are the conditions in which the frontier is divided. The western part of the frontier was the part under dispute, and I am happy to say in the name of my country that I am extremely grateful to the Council for having returned a village of 1,800 Magyars to its fatherland.

"With regard to the eastern part of the frontier in question, I am com-

[16] *Official Journal,* June, 1923; p. 634.

[17] It should be noted that the *rapporteur* in this instance was a Brazilian, unfamiliar with the part of the world concerned. An analogous case would be the settlement of a Brazilian dispute at Prague.

[18] It is evident from this consultation with a Military Commission that this decision was to be based upon strategic and not economic grounds. For constitution of the Permanent Advisory Commission, a purely military body whose members represent their governments and not the League, see Chap. XXXVI, p. 693.

[19] *Official Journal,* June, 1923; p. 602.

pelled to say that the Council's decision upon it is literally a crushing one. I must point out that that part of the frontier was never under dispute. Even the minority of the Delimitation Commission recognized that the frontier they proposed (Scheme 2), which passed well to the north of the frontier indicated by the Council, was a line entirely in conformity with the stipulations of the Treaty. The whole question has been discussed here on the basis of the covering letter from M. Millerand, and the line fixed by the Treaty has been changed to the detriment of Hungary." * * *

Since the decision of the Council had been agreed to in advance, conventions were drawn up between Czechoslovakia and Hungary for the necessary modifications of the station of Somosujfalu as a frontier station; and for the facilities to be afforded by Czechoslovakia to Hungarian quarry-owners, to operate their quarries on Czechoslovak territory. On February 15th, 1923, the new frontier came into operation.

THE HUNGARIAN-ROUMANIAN FRONTIER

The loss of Transylvania was perhaps the severest blow dealt to Hungary by the Treaty of Trianon. This, the most beautiful and the richest section of Hungary, was given to Roumania, together with nearly 1,500,000 people of pure Hungarian race. The frontier, separating Transylvania from Hungary, was traced over what is, probably, the most indivisible territory in Europe. The Transylvanian Mountains, on the east and southeast, and the River Tisza, on the north and northwest, form a ring around an indescribably flat land, known as the great Hungarian Plain. This Plain is not only a geographical unit, with its natural boundaries, but it is also a hydrographic unit, with a system of rivers flowing from east to west tributary to the main river, the Tisza, which flows from north to south. For centuries this sluggish, winding river of the plains could not take up the rapid waters from the mountains, and every spring the Plain was subject to inundations which turned large parts of it into swamps. In the last hundred years, however, a system of sluices and canals has been constructed which not only controls the mountain rivers, but has completely changed the character of the territory, by draining the swamps and turning them into fertile lands, and by furnishing water-power for the industrial development of the towns. The Plain was an important factor in the economic life of Hungary when it was cut by the new frontier.

In the absence of natural boundaries, the Frontier Delimitation Commission used a railway line between the towns of Szatmárnémeti

and Arad on a stretch of about 280 kilometers as a basis for marking out the frontier, supplementing it by establishing "zones for future development" around towns near the frontier and by utilizing existing boundaries between communes and counties.

While Transylvania and Hungary were one country, the railway lines, as laid down by the Hungarian Government, consisting of the above-mentioned main line running from north to south on the edge of the Plain, and branch lines from east to west, connecting the larger cities of the Plain with the valleys of Transylvania, had been sufficient. When the territories came to be separated, Roumania claimed and was granted this railway system. The claim was based, not on ethical grounds, for the main cities on the line had a large Hungarian majority of population, but on the ground that the line was important economically and strategically, for connecting northern and southern Transylvania, and for affording direct connection through Roumanian territory from Czechoslovakia to Yugo-Slavia.[20] The frontier was drawn parallel with this railway line, cutting the system so as to leave the sluices in Roumania and the territory which they serve in Hungary. This division created difficulties, examples of which are the following:

The sluice at Nagypél regulates the River Körös and provides water power to three developing industrial towns of Hungary. Whoever controls this sluice also controls, not only the industries of the towns of Békés, Békéscsaba and Gyula, but is in a position to flood their territory at will. The sluice was to be given to Roumania. Hungary submitted a proposal for rectification to the Delimitation Commission, asking for a territory of about ten square kilometers, containing the sluice. This was refused, but the French Chairman of the Delimitation Commission suggested that Hungary be given a corridor six kilometers long and fifty meters wide along the canal leading to and including the sluice. This might have been agreed to, had the proposed corridor not been crossed by a road connecting two Roumanian villages. Roumania accordingly objected that frontier control would be complicated. Hungary suggested a solution by building a bridge on each side of the canal *over* the Roumanian road, so the Hungarian guard going and coming to and from the sluice would not have to tread on Roumanian territory. This proposal was rejected on the ground that a bridge over the Roumanian territory would offend Roumania's

[20] It will be observed that the whole railway line used to be on Hungarian territory, and by the new frontiers the northern end of it was given to Czechoslovakia, the center to Roumania and the southern end to Yugo-Slavia.

supremacy in the air. The project was dropped, and the sluice of Nagypél is today cut by the frontier from the towns it supplies.[21]

In connection with the larger towns near the frontier, the Delimitation Commission applied a new principle, that of setting up "zones for suburbs and future development." This was done by drawing a circle with a radius of twelve miles around each town and adjusting the frontier to leave such circles intact.[22] The large towns lay mostly on the railway line which had been ceded to Roumania; accordingly the adjustments were largely to the advantage of that country. In the case of the town of Gyula, which was left to Hungary, no such adjustment took place; on the contrary, the frontier is only about four kilometers distant from the town. At this point, the frontier followed a community boundary, adhering strictly to the line, even where it passed through the stableyard of the farm of Gyulavàri, leaving half of a barn in Roumania and half in Hungary.[23]

The Delimitation Commission, in marking the new frontier, did not hesitate to cut grazing ground away from the stables for the cattle, to

[21] A somewhat analogous case would exist if a state boundary line were to be drawn between the Roosevelt Dam in Arizona and the land it irrigates, and the Arizona territory were suddenly to become dependent upon a neighboring state for the right to use the water when it was needed and shut it off when it was not. If there were bad will between the two states, Arizona would find its lands dried up when it needed water and flooded when it did not. Furthermore, an intricate canal system, such as is constructed in Hungary, requires engineers familiar with meteorological conditions, if crops are not to be ruined; and the substitution of peasant sluice-keepers without engineering supervision is not conducive to either good crops or an improvement in good will.

Another instance of a situation created by the cut canal system is a hemp factory at Nagylak, south of the above-mentioned sluice and depending upon the River Maros for its water. A canal starting from the River Maros furnished this factory with water for soaking hemp. The mouth of the canal is now on Roumanian territory, and, as it does not receive the necessary attention, the canal is mostly dry. The factory has not been working, for until recently it has been cut by the frontier in a manner to separate the works from the soakers; a recent rectification has returned the soakers to Hungary, but this rectification is futile until a new canal is built on Hungarian territory, for at present the factory has no control over its water supply.

[22] These towns, with populations of sixty to seventy thousand, were given development zones as large as that of Budapest—a city with a population of over one million.

[23] This line has been modified to pass within a few yards of the farm buildings, and at present only cuts a field and a farm railway. Nevertheless, it gave rise to a tragedy. One of the farm hands crossed a few steps into Roumanian territory, with the purpose, it seems, of getting hay for his horses. He was arrested by the Roumanian frontier guard for breaking the customs laws, and, in the ensuing scuffle, a Hungarian workman was killed. This happened in 1921; but in the summer of 1923, when the writer visited this frontier, the man who had been arrested for getting the hay was still in prison in Roumania.

cut villages away from the estates for which the inhabitants worked, to cut barns away from fields; but, in one instance it cut in two a railway station. This is the station at Kötögyán, where the Treaty laid down that the frontier was to cut a local line between two bifurcations. It happened that the spot between the two bifurcations was the station. No train service has been operated on this line since the frontier was established, as there is not enough space left between each bifurcation and the frontier for trains to switch. A group of small towns and villages, both in Hungary and in Roumania, are thus left without railway service, which in a country where roads are bad and railway lines scare, is a serious problem.

The note of the Conference of Ambassadors of May 6th, 1920, under which the Yugo-Slav and Czechoslovak frontier rectifications were appealed to the League, permitted similar procedure to that followed with Roumania. When the Delimitation Commission reported on proposed modifications to the Conference of Ambassadors, the Governments made no use of their right of appeal. On December 21st, 1922, the President of the Conference of Ambassadors informed the Secretary-General of the League of Nations, that the work of delimiting the Roumanian-Hungarian frontier was suspended on all sections where rectifications had been proposed, as neither the Hungarian nor the Roumanian Governments had solicited the good offices of the Council in accordance with the note of May 6th, 1920. On the same date, the President of the Conference of Ambassadors also notified the Hungarian and Roumanian Governments to request mediation before January 1st, 1923, if they wished the services of the Council; otherwise the Conference of Ambassadors would proceed with the delimitation of the disputed sections according to the Treaty of Trianon.[24]

Hungary had made two appeals to the League in the case of the Czechoslovak and Yugo-Slav frontiers and its experiences did not encourage it to make a third attempt. Roumania had no reason to ask for rectifications. Accordingly, the frontier of the disputed sections was laid down as the Treaty of Trianon provides, and does not constitute the foundation for a lasting peace.

THE BURGENLAND

This territory, known as Western Hungary, was much discussed during the drawing up of the Treaties of St. Germain and Trianon. It covered about 450,000 hectares and had approximately 330,000 inhabitants, of which about 70 per cent were German and the rest

[24] *Official Journal*, January, 1923; p. 120.

Hungarian and Croat. It stretched from the Danube, on the north, to the River Mur, at the south. Two countries claimed it from Hungary: Austria, on ethnical grounds, and Czechoslovakia, on the ground that this territory would give it a corridor and a free outlet through Yugo-Slavia to the Adriatic Sea. Italy opposed the latter plan, which would have immensely strengthened the Slav bloc; and the Treaty of St. Germain laid down the frontier of Austria so as to include the Burgenland. This constituted an unprecedented action in the history of wars and peace treaties, for territory was taken by the Allied Powers from one of their former enemies—Hungary—and given to another of their former enemies—Austria. An analogous instance would have occurred had the Peace Treaty awarded French territory to Belgium.

The transfer of the territory was to take place when the Treaty of Trianon came into effect, and was to be supervised by a Military Commission sent by the Allied Powers. But, on August 20th, 1921, the date fixed for the surrender, Hungary had only evacuated a part of the territory, and in the part not evacuated, the pro-Hungarian population was engaged in an uprising against Austrian occupation. Irregular bands from Hungary came to the support of the local insurgents and within a week not only reoccupied the whole territory, ousting the Austrian police, but, in places, crossed the former Austrian boundary. Disavowed by the Hungarian Government, these bands formed a Committee of Defense and proclaimed the independence of West Hungary.

Austria appealed to the League in a note dated September 7th, 1921, drawing the attention of the Council to the violation of Austrian territory and invoking Articles 10, 11 and 17.[25] On September 10th, the Austrian Government addressed another note to the League, stating that it had also informed the Conference of Ambassadors, requesting its intervention, and that body had addressed a note to the Hungarian Government.[26] The action taken by the League, on September 12th, was to dispatch the following note: [27]

"The Council notes that the Austrian Government desires immediately to notify the Members of the League of the violation of its territory, in order that they may have complete knowledge of the facts.

"It further notes that the Austrian Government has informed the Ambassadors' Conference of its difficulties with the Hungarian Government concerning the execution of the Treaty of Trianon, and that the Ambassadors'

[25] Article 17 was invoked because Hungary was not a Member of the League at that time.

[26] *Minutes of the Fourteenth Session of the Council;* p. 136; [27] *Ibid.;* p. 137.

Conference, which is entrusted with the execution of the recent peace treaties, has already taken steps in the matter.

"Under these conditions, the Council is of opinion that, for the moment, there is no need for intervention on the part of the League of Nations. The request submitted by your Government is being held over. The Council will follow the matter with the greatest attention, and will be glad to receive from the Austrian Government the information promised in the second note, to enable it to decide upon the action to be taken."

The action taken by the Conference of Ambassadors proved more effective. On September 22nd, 1921, a note was transmitted to the Hungarian Government, ordering the Hungarians to evacuate the contested territory by October 4th; and on that date the contested territory was evacuated by all except the garrisons retained by the Military Commission.

Italy offered to mediate between the disputants, and the offer being accepted by both Governments, and approved by the Conference of Ambassadors, representatives of Austria and Hungary met at Venice on October 11th, 1921. An agreement was formulated in the Protocol of Venice to the effect that the city of Sopron (Oldenburg), with a small surrounding district, was to determine its future by plebiscite; Hungary was to evacuate the remainder of the Burgenland; and a Delimitation Commission was to mark out the frontier on the spot.[28] Austria agreed to accept "as far as possible" the decisions of this Commission, and should any differences arise, to accept the decision recommended by the Council of the League. The plebiscite was held on December 17th, 1921, with a result favorable to Hungary, which country regained Sopron and the surrounding district; the rest of the Burgenland was peacefully occupied by Austria and the Delimitation Commission proceeded with its work.

In the course of marking out the frontier, the Commission agreed unanimously to make three alterations to the advantage of Hungary. Austria considered these modifications unjustified, and the question was submitted to the League, as provided by the Protocol of Venice. The Council took up the matter at a meeting on July 19th, 1922, and M. Hymans (Belgium) was requested to make a report. On September 13th, 1922, he reported on the proposals of the Delimitation Commission and on the observations of the Austrian and Hungarian representatives:

The Delimitation Commission's proposals were:[29] (1) That the commune of Pamhagen, with about 2,000 inhabitants, should be

[28] *Official Journal,* November, 1922, II; p. 1332.
[29] *Official Journal,* November, 1922; pp. 1318-1322.

returned to Hungary. The reason given was that this village was within the district called the flood area of the River Raab, an area covered by an hydraulic system centering in the Einser Canal on Hungarian territory. The Commission thought that all communes within the flood area should be left to Hungary. (2) That the region of Léka, including four communes, with a population of 2,000, should be returned to Hungary. The reasons given were economic; these communes being linked with the town of Köszeg, which had been left to Hungary. The Commission was also of the opinion that the forests of this district were more necessary to Hungary than to Austria. (3) That the Valley of the Pinka, containing thirteen communes, with about 7,000 inhabitants, was to be returned to Hungary. The reasons given were that the inhabitants of the communes, although Croats in the majority, had strong Hungarian sympathies; that these communes depended on the town of Szombathely, in Hungary, and that the forests of the region were necessary to that country.

In submitting this report, M. Hymans stated that he and the members of the Secretariat had endeavored to give an impartial summary of the arguments; and that the territories and interests disputed were relatively unimportant, in proportion to the amount of ill-feeling they had provoked.[30]

On September 19th, the Council suggested the following boundary: [31] (1) The commune of Pamhagen was to be given to Austria and a convention was to be drafted by the Delimitation Commission to safeguard the hydro-technical interests.[32] This convention was to be binding on the Government concerned and the execution of it was to be supervised by the Permanent Technical Hydraulic System Commission, created under Article 293 of the Treaty of Trianon. (2) The region of Léka was divided, the communal woods belonging to the town of Köszeg were left to Hungary, but the villages were assigned to Austria. (3) The Pinka Valley was divided, the northern section being given to Hungary and the southern part, with a railway line connecting Austrian villages, was left to Austria.

The Delimitation Commission then proceeded to mark out the frontier on the spot. But the decision of Council appears not to have

[30] See opinion of M. da Gama on the Czechoslovak frontier; p. 306. It does not appear that the *rapporteur* and the members of the Secretariat were any more familiar with this territory than was the Brazilian *rapporteur* with the Czechoslovak boundary.

[31] *Official Journal*, November, 1922; p. 1338.

[32] See territorial division of Upper Silesia and its unification by Convention; Chap. VII; p. 170.

had the finality attributed to it, for on January 7th, 1923, the Conference of Ambassadors sent the following note to the Secretary-General of the League: [33]

"When the work of fixing the frontier line on the spot had been completed, the Austrian and Hungarian Governments agreed to make certain slight rectifications in the frontier thus traced, which though of no great importance, nevertheless alter the attribution of certain places specified in the Treaty and in the Council's decision.

"On being asked to express its opinion with regard to these rectifications proposed by the Governments concerned, the Delimitation Commission decided unanimously that they were equitable. * * *

"The Conference of Ambassadors therefore considered that the rectifications in question might be finally approved, even as regards the places specified in the decision of the Council of the League of Nations, dated September 19th, 1922, and instructions were given to the Delimitation Commission accordingly. The Conference of Ambassadors would, however, have sought the opinion of the Council before taking action in this matter if circumstances had not compelled it to give a decision without delay."

COMMENTARY

These frontier questions present the League of Nations in a new aspect—as a collaborator with the Allied Powers in settling boundary questions. The Allied Powers constituted the Council a kind of tribunal of appeal from the recommendations of its Delimitation Commissions, with the following results, in practice:

In the Yugo-Slav-Hungarian boundary dispute the Council proved impotent against the opposition of a member state, and confessed its failure to the Conference, which fixed the frontier in disregard of the recommendations of its Delimitation Commission. In this instance, it may be observed that the first of Mr. Wilson's five particulars was irretrievably lost, namely: "The impartial justice meted out must involve no discrimination between those to whom we wish to be just and those to whom we do not wish to be just.[34]

In the Hungarian-Czechoslovakian boundary question, the Council proved more competent, for it succeeded in separating some villages and inhabitants from their source of income, thereby following the nationality principle in giving the inhabitants to Hungary, and the economic principle in giving the quarries to Czechoslovakia. The strategics of war thus find their way occasionally into agencies established to maintain peace.

The Hungarians, having sampled the quality of justice, pronounced

[33] *Official Journal,* February, 1923; p. 178.
[34] Speech of September 27th, 1918.

by the League, preferred to leave the rectifications of the Roumanian frontier to the Delimitation Commission on the theory that strategic and economic principles would be as equitably applied in the one case as in the other and that bisected farms, and cut canal systems, and disconnected railways and disrupted industries were part of the penalty of war which no League of Nations in the least affected.

The Burgenland illustrates the preponderating effectiveness of force. In three instances the Hungarians tried conciliation and in two of them they resorted to the Covenant and lost. In the fourth instance they relied upon themselves and won a strip of the Burgenland. When Austria, a member state, appealed to the League, it was referred to the Conference, and it, too, learned what it may expect from the Covenant in times of aggression.

The claim of Hungary to the Burgenland was not stronger than its claim to territories on the Yugo-Slav, Czechoslovak and Roumanian frontiers. But in this case, Hungary had a weak opponent in Austria and a strong protector in Italy, and received, by a resort to violence, what it had not been able to achieve on its other frontiers, by resort to mediation.

CHAPTER XV

TRANSFER OF EUPEN AND MALMEDY

This territory belonged for four centuries to the Austrian and Spanish Netherlands and was acquired by Germany in 1815. It lies north of Luxembourg (on the Belgian frontier) and extends over about 1000 square kilometers and is divided into two districts, each with its main town. Malmedy has a population of 36,916, of which about 28 per cent are Walloons, speaking French; Eupen has a population of 27,024, of which more than 90 per cent are reported to be German. The total population for the district is 63,940. The territory is valuable chiefly for its forests, zinc ore and textile industries.

The sovereignty over this district was the subject of controversy during the Peace Conference. France desired that it should go to Belgium; Great Britain and Mr. Wilson objected; and Germany urged that the German population should not be made an adjunct to the resources of the country desired by France and Belgium. A compromise was reached and is expressed in the incorporation of Article 34 in the Treaty, which reads as follows:

"Article 34. Germany renounces in favour of Belgium all rights and title over the territory comprising the whole of the *Kreise* of Eupen and Malmedy.

"During the six months after the coming into force of this Treaty, registers will be opened by the Belgian authorities at Eupen and Malmedy in which the inhabitants of the above territory will be entitled to record in writing a desire to see the whole or part of it remain under German sovereignty.

"The results of this public expression of opinion will be communicated by the Belgian Government to the League of Nations, and Belgium undertakes to accept the decision of the League."

It will be observed that these provisions are not in the nature of a plebiscite and possess the following peculiarities: (1) The sovereignty of the territory in question was transferred to Belgium *before* the record of public opinion was undertaken. (2) The recording was taken under the supervision of the state to which the sovereignty of the territory had already been temporarily awarded. (3) No provision was made for an impartial or neutral supervision of these registers, that being left to the beneficiary Government. (4) The one specific regulation provided that registers were to be open for a period of six months at Eupen and at Malmedy. (5) Belgium agreed to report the results to the League and abide by its decision; but concerning the

details of that decision nothing was stated. (6) The powers of the League were apparently to be confined to giving validity to an act by attaching its good name to a transaction over which it had no direct control.

Light is thrown upon this vague transaction in "A History of the Peace Conference of Paris," wherein the editors state:[1]

"The Powers base the transfer of the territories of Eupen and Malmedy to Belgian sovereignty upon their long and close economic and social relationship with adjacent portions of Belgian territory, and upon the fact that they were made a basis for German militarism. These reasons justify the transfer, the Powers assert, provided such transfer is ratified by the self-determination of the population."

It will be observed that the Allied Powers succeeded in obtaining American and German assent to this transfer on the ground that it was to be "ratified by the self-determination of the population."

THE REGISTRATION

On January 26th, 1920, the Belgian Government provided, in a decree, that men and women of German nationality over 21 years of age, and who were living in the territory on August 1st, 1914, and were still living there when the Treaty came into force, should have the right to register, and that registers should be opened in Eupen and Malmedy every working day from 9 to 12, in which such persons might record their desire, whether all or part of the territories of the two districts should remain under German sovereignty. It also provided penalties for fraudulent registration.[2]

These registers were kept open for a period of six months, and at the end of that time showed the following results: Out of a population of 63,940 people, 271 had recorded their votes in favor of remaining with Germany. Of these, 62 were in the Malmedy district, which had a population of 36,916; while 209 were in Eupen, with a population of 27,024.[3] It was officially stated that of the 271 registrations, 202 had been German State officials, leaving 69 others who had registered. This was approximately one person out of every 1000 of the civil population.

THE DISPUTE

It was but natural that so fantastic a demonstration of self-determination should give rise to suspicion and protest. While the recording

[1] Vol. II; p. 388.
[2] *Official Journal,* July-August, 1920; pp. 289-290.
[3] *Ibid.,* October, 1920; p. 407.

was in process, complaints were made by the German Government that the inhabitants who registered a protest were being intimidated in the following respects: (1) That export and other permits were to be withdrawn from persons recording their opinion; (2) that passports to Belgium and three language stamps entitling the holder to free movement within the occupied territory were to be withheld (a serious matter for 3,000 workmen employed in the district of Aix-la-Chapelle); (3) that a share in the distribution of German foodstuffs was to be withheld; (4) that the exchange of money was to be stopped; (5) and that employment under control of the Government was to be discontinued, in the event of registration.[4] These complaints began arriving in April, 1920. The first one recorded that a general strike had been declared on April 14th, 1920, as a protest against the methods being used; and requested that the League investigate the matter. In May, 1920, the German Government submitted fourteen complaints, duly attested and signed, which it alleged were but a small part of the number received, and again requested an inquiry by the Council.[5] These, and other complaints of a similar nature, were denied by the Belgian authorities.

The issue was thus squarely placed before the League to determine the truth of the charges. The Council (assuming itself to be the *League of Nations,* as defined in the Treaty) appointed M. M. K. Matsui (Japan) to submit a report upon the matter which it adopted at its meeting in Rome in May, 1920. The decision of the Council was as follows: [6]

"The wording of the said Article appears to entrust the arrangements for the public expression of opinion entirely to the Belgian authorities. It is provided that the registers in which the inhabitants, during the six months after the coming into force of the Treaty of Peace, are entitled to record their desire to see the whole or part of the territory in question remain under German sovereignty, shall be opened by the Belgian authorities, and that the results of this public expression of opinion shall be communicated

[4] One of the circulars complained of was as follows:

Withdrawal of Privileges:

shall be deprived of the following privileges, *i. e.*:—

1. Exchanging the mark.
2. Allotment of Belgian foodstuffs.
3. Passports to Belgium and the "three-language stamp."
4. Export-permits, permits, etc., etc., those persons who have entered their names in the register protesting against the reunion of the new territories with Belgium. (Signed). (*Official Journal,* June, 1920; p. 171.)

[5] *Official Journal,* June, 1920; pp. 171-176; [6] *Ibid.;* p. 120.

by the Belgian Government to the League of Nations. These results cannot possibly be communicated to the League until after the expiration of the six months after the coming into force of the Treaty of Peace, *i.e.*, six months after 10th January, 1920. Under Article 34, Belgium undertakes to accept the decision of the League. The League, therefore, will at that time be fully qualified to take cognizance of the conditions under which the plebiscite was held, and, consequently, to take any necessary measures. But the Treaty of Peace does not give the League any right to intervene previous to the communication which the Belgian Government shall make under the Treaty, of the results of the public expression of opinion."

It will be observed that the Council pleaded its incompetence to make any inquiry into the conditions under which the record was being taken until such time as the record was presented to it for its decision; but that it considered itself qualified later to look into the conditions under which the plebiscite had been held.

THE DECISION OF THE COUNCIL

On August 17th, 1920, the Belgian Government rendered a report to the League of Nations containing the results of the recording of public opinion, as above set forth. In concluding his report the Belgian representative requested the League to recognize the definitive character of the transfer of these districts to the sovereignty of Belgium. The Council referred the report to M. Gastao da Cunha (Brazil). The question then before the League was to determine whether the transfer made by the Treaty and "ratified" by a record of opinion by 271 persons should become definite. The report submitted by M. da Cunha recommended the following, which was adopted at the ninth session of the Council: [7]

"That, inasmuch as full effective sovereignty over the districts of Eupen and Malmedy was exercised by Belgium, the establishment of the conditions for the public expression of opinion provided for in Article 34 appertained to the Belgian Government;

"That the conditions established by the Belgian authorities are in harmony with the letter and the spirit of the Treaty;

"That the results of the public expression of opinion were brought to the knowledge of the League of Nations on 19th August, 1920, by the Belgian Government, together with the Registers on which the protests were recorded;

"That these protests are 271 in number out of a total population of more than 63,000 inhabitants;

"That these results show that among the inhabitants of Eupen and Malmedy the opposition to the cession of these districts is not sufficiently strong

[7] *Official Journal,* October, 1920; p. 408.

to outweigh, in the opinion of the League, all the considerations which form the basis of provisions of the Treaty;

"That under these conditions the cession of the districts to Belgium is, according to the terms of the Treaty of Versailles, to remain effective and valid;

"That no other decision can be taken unless it was demonstrated by definite and concordant proofs that the result of the public expression of opinion had been determined by means of intimidation and pressure, by abuse of authority and threat of reprisals which had prevented the free expression of the will of the inhabitants;

"That the documents brought forward with a view to proving such abuses or manoeuvres are not pertinent nor definite;

"That, finally, the circular which forms the subject of a charge against a Belgian official, and which threatened reprisals against persons of three communes of the district of Malmedy, who protested, was immediately disclaimed by the High Commissioner of the Belgian Government and was not applied;

"Recognizes: the definitive transfer of the districts of Eupen and Malmedy under the sovereignty of Belgium."

It will be observed that although the Council in its resolution adopted in May, 1920, asserted its competence to take cognizance of the conditions under which the plebiscite was held, in August it failed to exercise that right because it could not obtain unanimous consent to make an inquiry. It, therefore, contented itself with enunciating a series of platitudes, among which were the following: (1) That the conditions (unknown officially to the Council) established by Belgium were in harmony with the Treaty; (2) that a vote of 271 out of more than 63,000 inhabitants was not sufficient to outweigh all the considerations which form the basis of the Treaty (considerations being unspecified as to kind and extent); (3) that records of strikes and affidavits alleging oppression and the publication of official circulars containing orders of withdrawal of rights from voters were neither pertinent nor definite; (4) that a disclaimer by a public official was a sufficient rebuttal of the complaints of a people.

In accordance with the decision of the League, Belgium, in 1920, established a government in these districts under a Royal High Commissioner, Baron Baltia. The provisional regime ended in January, 1924, and the territory is now incorporated under the general Belgian administration. The incident is closed, but the record of the League remains indelible.

THE COMPETENCE OF THE COUNCIL

In a note dated October 2nd, 1920, the German Government declared that it could not recognize the legality of the transfer of Eupen

and Malmedy, since a decision in this matter lay with the *League of Nations* and not with the Council. To this note, the Secretary-General replied that the competence of the Council to deal with the matter could not be questioned. The German Government objected to this reply in a further note, pointing out that it had not asked for a decision by the Council on the question of the competence of the Council to decide what states constitute the "League," but that it desired a decision of the Assembly on this question. The *rapporteur,* M. da Cunha, sent an evasive reply on November 29th, 1920, repeating that the competence of the Council could not be questioned, ending as follows: [8]

> The Council * * * "wishes me further to state that all the members of the League have been kept informed of the question of Eupen and Malmedy and that in the Report of the Secretary-General to the Assembly on the work of the Council, the protest of the German Government against the competence of the Council has been expressly mentioned."

The Report of the Secretary-General to the First Assembly "expressly mentioned" the German protest by completely ignoring it, as the references contained therein relate only to German protests concerning the intimidation of voters. The phrasing, however, is misleading in its reference to competence as the following excerpt indicates.[9]

> "The German Government protested against this decision in a communication addressed to the Secretary-General, in which it denied the competence of the Council to deal with the matter. The Council during its session at Brussels affirmed its competence under the Covenant and discussed the German protest."

It may be observed (1) that the report makes no mention of the fact that Germany, while questioning the competence of the Council, was *ready to accept a decision of the Assembly;* (2) nor does the report specify that the question of incompetence of the Council related to the competence of the Assembly; and (3) the report of the Secretary-General also makes no mention of the number of votes cast; thereby failing to call the attention of the Assembly to the disparity between the population and the vote.

[8] *Official Journal,* November-December, 1920; p. 85.
[9] Report of Secretary-General to the First Assembly; p. 25.

COMMENTARY

This dispute, small as is the territory and population affected, has contributed much to the understanding of the character and methods of the League in the following respects. (1) The Council decided that it was the *League of Nations* for the purpose mentioned in the Treaty. (2) That it could not examine allegations of intimidation until the record was submitted. (3) That the small number of votes recorded, of one to every thousand of the population, was a matter of conclusive proof of the wish of the inhabitants to join Belgium rather than a cause for suspicion. (4) That the documents brought forward, alleging intimidation, were neither pertinent nor definite, and the League was not called upon to give any hearing upon the subject or make any further inquiries.[10] (5) The basis on which this opinion of the documents was rendered was nowhere set forth. (6) That a general strike against a method of voting was not of sufficient importance to warrant an inquiry. (7) That it was not denied that an order withdrawing privileges from those who registered had been issued. There was only a disclaimer accompanied by an assertion that it had not been applied, but whether it was in existence and concerning its object, the League Council was not called upon to investigate.

Admitting that the Treaty provisions were vague, nevertheless the transfer could not be legalized without the moral sanction of the League and that sanction was exercised in a manner to establish the following principles:

When a question is entrusted to the *League of Nations* and the Council assumes jurisdiction under that general designation, and a protest regarding this interpretation is raised, as between the Assembly

[10] The following is one of the fourteen complaints which the League considered to be neither pertinent nor definite:

"I was at Malmedy on the . . . in order to lodge a protest with the District Commissioner against the separation of the district of Malmedy from Germany. When I informed the Commissioner of my intention he told me that if I signed the protest I should

"(1) Not be able to change my money.

"(2) Should be excluded from the allotment of Belgian foodstuffs; and

"(3) Would run the risk of being expelled at the end of six months.

"As I am a resident land owner in the district and do not wish to leave my home at any price, I have had to forego my right of protest, chiefly on account of the threat of expulsion. I request the German Government to obtain for the district of Malmedy freedom and secrecy of the voting which is to decide the future nationality of our district. *(Official Journal,* June, 1920; p. 173.

and the Council, the latter will decide the question without referring the matter to the Assembly and will only call the attention of that body to the question in a vague report which alludes to competence without specifying the point involved.

When the Council admits that it is fully qualified to take cognizance of conditions within its jurisdiction that is not to be construed as a promise that it will do so. And in the event that evidence sufficient to invoke the jurisdiction of a court is presented, that is not a guarantee that it will prove sufficient for political action by the Council.

The Council regarded the transfer of sovereignty over a people and the attaching of its good name to the transaction as of so little importance that it made no inquiry into the election which it validated, and accepted the word of the beneficiary state under conditions where but one person in a thousand recorded his protest.

The request of oppressed people to be heard—a fundamental right guaranteed by every member state in its own territory—is denied by these same states acting in their capacity as the League of Nations; thus the League becomes an autocratic international organization on the basis of democratic national governments.

CHAPTER XVI

BULGARIA—THE KEY TO BALKAN PEACE

Bulgaria is situated in the northeast of the Balkan Peninsula, on the Black Sea. Its neighbors are Roumania on the north, Yugo-Slavia on the west, and Greece and Turkey on the south. The area of the country is 45,000 square miles; the population numbers 5,200,000. The old Kingdom of Bulgaria was conquered by the Turks in the fourteenth century and held by them until 1878, when the Treaty of Berlin changed the status of the country to an autonomous kingdom, tributary to Turkey. The territory then assigned to Bulgaria did not comprise all Bulgar-speaking people, and thus surrounded Bulgaria by disputed territories. These are: on the north the Dodbrudja, a fertile land on the Black Sea; on the south, Western Thrace, on the Aegean Sea; and on the southwest, Macedonia, a mountainous country stretching from the center of the Balkan Peninsula to the Aegean Sea. In 1912-13, Bulgaria, Greece and Serbia, in the First Balkan War, evicted the Turks from Macedonia and Thrace. The Treaty of London (1913) assigned Thrace to Bulgaria, but Macedonia remained disputed and this led to the Second Balkan War in 1913 between Bulgaria and all its neighbours. In this war Bulgaria lost the Dobrudja to Roumania, Macedonia to Serbia and Greece, Eastern Thrace to Turkey, but succeeded in retaining Western Thrace with its Aegean coast.

The territorial losses of Bulgaria, after the second Balkan War, were such that, in 1918, there was not much left to award to the victorious countries. Nevertheless, two small salients in northern Macedonia, strategically important, as they threatened the railway from Belgrade to Saloniki, were given to Yugo-Slavia, and Western Thrace was awarded to Greece, by the Treaty of Neuilly.

This Treaty did little to remove the causes that had led to the Second Balkan War, for it left Macedonia a territory overrun by irregular troops, *comitadjis,* fighting for autonomy; it left Bulgaria overrun by refugees from Macedonia, loudly demanding help for their country; and it left Yugo-Slavia and Greece in dispute over the port of Saloniki, in southern Macedonia,[1] which is useless to both until peace in Macedonia is restored; and it left Greece in possession of the Aegean sea-

[1] The Port of Saloniki, in Southern Macedonia on the Aegean Sea, belongs to Greece, but by a recent agreement has been ceded to Yugo-Slavia for a period of fifty years. The port is to be administered by Yugo-Slav officials and will be a Yugo-Slav customs region.

coast of Bulgaria, with a promise to Bulgaria that its free outlet to the sea would be guaranteed; and did not provide for this free outlet. From these circumstances have arisen two disputes which were appealed to the League of Nations under Article 11.

THE MACEDONIAN FRONTIER

On June 14th, 1922, a communication was transmitted to the Bulgarian Government by the Foreign Minister of Roumania, on behalf of the governments of Yugo-Slavia, Greece and Roumania. The communication stated that Bulgarian irregular bands had been causing unrest on the frontiers of Roumania, Yugo-Slavia and Greece, and that the respective governments had requested Roumania to take measures with the Bulgarian Government to secure the immeditate cessation of such incursions. The assurances given by the Bulgarian Government had caused Roumania to postpone these measures, to which the attention of Bulgaria was again drawn.[2]

Upon receipt of this note, Bulgaria at once appealed to the League, invoking Article 11. In a letter of June 17th, 1922, to the Secretary-General, the Bulgarian representative to the League stated that the only forces at the disposal of Bulgaria were troops recruited under the voluntary system, equal neither in number nor in training to the difficult task of breaking up irregular bands; [3] that in spite of overwhelming difficulties, Bulgaria was doing its best to keep order on the frontiers; and that its failure must be ascribed in part to the lack of co-operation of the neighboring governments. The note also stated that the district on the Yugo-Slav frontier (Macedonia) had for the last fifty years been the center of revolutionary struggles; on the Greek frontier it was Greek armed bands and agitators that entered Bulgaria and not, as alleged, Bulgarians causing unrest in Greece; and on the Roumanian frontier the activities of the bands were "simply in the nature of brigandage." The Bulgarian Government had repeatedly recommended that a commission of inquiry be sent to help re-establish

[2] *Official Journal,* August, 1922, II; p. 796.

[3] Articles 65 and 66 of the Treaty of Neuilly abolish compulsory military service and permit Bulgaria to maintain an army recruited only by voluntary enlistment and numbering 20,000 men; owing to the high cost of a voluntary army, the country has but 10,000 men under arms at present. Bulgaria has appealed to the Inter-Allied Commission for Liquidation of Military Forces and to the Conference of Ambassadors to change the provisions of the Treaty of Neuilly, pointing out the impossibility of maintaining order in the country with such a limited number of men under arms, but the appeals have been refused.

order, but the other three governments had objected, thus making necessary, by their last note, the Bulgarian appeal to the League.[4]

At a meeting on July 18th, 1922, the Council took up the matter. The Roumanian representative claimed that the question before the Council was: "Did the Note sent to Bulgaria threaten to cause a breach of peace?" and suggested that there was no reason for intervention. He quoted a letter from M. Stambulisky, in answer to this note, which conceded that, of the Bulgarians which had remained outside the limits of the present state, about fifty thousand had taken refuge there,[5] and these refugees did form bands that crossed and recrossed the frontiers. Accordingly the complaint was justified. But, he continued: [6]

"In these circumstances, and especially in view of the fact that negotiations were already providing a friendly solution of the question, the intervention of the League of Nations would appear to be useless and even inopportune. If the three Powers thought that the question was such as to cause a breach of the peace, they would themselves have invoked the intervention of the League."

The Yugo-Slav representative agreed, and the Greek representative presented a declaration that the collective action of Greece, Roumania and Yugo-Slavia constituted no danger to peace. All three governments stated that direct negotiations were in progress.

At the following Council meeting, on July 19th, Viscount Ishii (Japan) made a report, summarizing the statements of the Roumanian, Greek and Yugo-Slav representatives and suggested that the Council might request a formal assurance that if the negotiations proved unsuccessful, the countries would lay the matter before the Council;[7] whereupon the following resolution was passed: [8]

* * * "The Council of the League of Nations

"Expresses its hope for a satisfactory conclusion to the efforts made by the interested Governments to put an end, by a direct agreement to a situation which may become dangerous to peace;

"And requests the Governments to inform the Council at its next session of the result of the negotiations in progress, and places itself at their disposal should its intervention be again required to avoid all possibility of a conflict."

The three countries and Bulgaria thereupon resumed negotiations.

[4] *Official Journal,* August, 1922, II; p. 764.

[5] The London *Times* of January 5th, 1924, states that there are some quarter of a million Bulgarian-speaking Macedonian emigrants living in Bulgaria.

[6] *Official Journal,* August, 1922, II; p. 796.

[7] *Ibid.;* p. 803.

[8] *Ibid.;* p. 804.

Bulgaria at first would not agree to the two conditions proposed, namely, to withdraw from the frontier all official servants of the state and all *comitadjis* notorious in the countries bordering on Bulgaria; and to suppress activities of so-called charitable organizations, which, it was alleged, under cover of charitable work, dispatched armed bands into foreign territories. Bulgaria protested that the first condition required removal of persons of whose guilt the Bulgarian Government had no knowledge, and the second condition attacked charitable associations which worked in conformity with Bulgarian laws.

Finally, in a note of September 28th, 1922, the Bulgarian Minister for Foreign Affairs informed the Yugo-Slav Government that a large number of suspects had been removed from the frontier, and that joint action could now be undertaken by the four states to suppress the activities of the bands. It seems that the Yugo-Slavs undertook to negotiate alone, for in March, 1923, a Serbo-Bulgarian Commission met at Nish with the object of putting an end to the invasion of revolutionary Macedonian bands in Bulgaria.

During these negotiations, the Yugo-Slav Government desired permission for Serbian troops to pursue Macedonian bandits on the Bulgarian side of the frontier. This aroused considerable ill-feeling among the Macedonian refugees. M. Stambulisky, Bulgarian Prime Minister, anxious for good relations between his country and Yugo-Slavia, was ready to collaborate in establishing order, but in June, 1923, he was murdered, and his government overthrown. The murder of Stambulisky seems to have been an indirect outcome of his anti-Macedonian policies; accordingly, his successor, Professor Tzankoff, not desiring to share the same fate, started out by pursuing a policy friendly toward Macedonians. This, however, led to further disagreement between Yugo-Slavia and Bulgaria, indicated by the following events:

In August, 1923, Yugo-Slavia protested against Macedonian demonstrations in Bulgaria in memory of the outbreak of the Macedonian insurrection of 1903; in September a Yugo-Slav note protested against the irregular Macedonian bands, and there were rumors of concentration of Yugo-Slav troops on the Macedonian frontier. In November, Bulgaria was forced to make a humiliating apology for an attack made in Sofia on the Yugo-Slav Military Attaché. Early in January, 1924, the Belgrade Government took offense at a speech of M. Tzankoff, in which he stated that friendly relations could only be resumed with Serbia if the rights of Macedonia were respected. The attitude of Yugo-Slavia has lately become more friendly, however, due to the arrest by Bulgaria of several hundred Macedonians considered dangerous to

peace; and owing to an agreement reached between Bulgaria and Roumania which provides for a mixed commission to meet every month and consider questions arising from border incursions.[9]

It will be observed from the foregoing that: (1) Bulgaria, with its limited army, appears to be incapable of establishing order under the present circumstances. If it opposes the Macedonian movement, interior disorder is the result—as in June, 1923, when Stambulisky was murdered; if it does not oppose the Macedonian movement, Yugo-Slavia threatens war. (2) The League Council accepted without further inquiry the assertion of Roumania, Greece and Yugo-Slavia, that there was no threat of war, and has taken no action to prevent war.[10]

WESTERN THRACE

The loss of Western Thrace was a serious blow to Bulgaria, for its two ports—Porto Lagos and Dedeagatch—gave Bulgarian commerce the possibility of a free outlet to the Aegean Sea. The territory was ceded by Bulgaria to the Allied Powers, by Article 4 of the Treaty of Neuilly; and in Article 1 of the Treaty of Sèvres, the Allied Powers transferred it to Greece. Since the latter Treaty was never ratified, Greece, by right, possesses Western Thrace by the ratification of the Treaty of Lausanne, which contains a similar provision. The difficulties caused by the Greco-Turkish War and the changes in the Turkish Treaties with the Allied Powers have prevented the Allied Powers from giving Bulgaria free access to the Aegean, as guaranteed in the Treaty of Neuilly. The Greek Minority Treaty, drawn up on the pattern of the Minority Treaties with Poland, Czechoslovakia, Roumania and Yugo-Slavia, was to come into effect together with the Treaty of Sèvres, and will come into force with ratification of the Treaty of Lausanne.[11]

A convention dealing with reciprocal emigration of Greek and Bulgarian minorities was concluded in November, 1919, as provided for in Article 56 of the Treaty of Neuilly. In accordance with this convention a Mixed Commission was created, two members of which were appointed by the Council of the League of Nations. This Commission

[9] *Christian Science Monitor*, April 19th, 1924.

[10] The recent opinion of the Commission of Jurists, appointed as a result of the Italo-Greek dispute, wherein they said that the Council and not the State is the judge of whether warfare is threatened, should enable the Council to disregard the assurances of Roumania and Yugo-Slavia that a rupture was not imminent and to proceed with its own inquiry. The occasion offers an excellent opportunity for the exercise of its newly acquired authority in a region known for its war-making capacity.

[11] Chap. XXII.

began its activities in September, 1920, and reported to the League in July, 1922, that the convention for exchange of minorities was prolonged by mutual agreement until October 15th, 1923.

In October, 1922, Greek refugees from Eastern Thrace and Asia Minor began to arrive in Western Thrace.[12] One hundred thousand acres of Greek land in the center of this territory were allocated for the purpose of settling some of these refugees, and according to a report of the League High Commissioner for Refugees, dated April 23rd, 1923, a model colony of ten thousand refugees in thirteen villages was founded. But there does not seem to have been space for both Bulgarians and Greeks, for on March 31st, 1923, the Bulgarian *chargé d'affaires* at Berne wrote the Secretary-General of the League as follows: [13]

"Since the total withdrawal of foreign control, Western Thrace has become the scene of very serious incidents. The Bulgarian population there is subject to a despotic and terrorist régime. The inhabitants of whole villages are driven from their homes, put on board ships and deported to the islands in the Archipelago; women are infamously outraged; property is sacked and pillaged. Only quite recently 1,330 Bulgarian peasants were put on shore in Crete and abandoned to their fate roofless and with only 120 grammes of bread.

"There is accurate information to prove that, taking advantage of the presence of large numbers of troops in the district, the Greek authorities have decided to get rid of the last remnants of the Bulgarian element in Western Thrace with a view to replacing them by Greek refugees from Eastern Thrace and Asia Minor and thus to alter the ethnical character of the country.

The Bulgarian Government, therefore, requested the Council, under Article 11, paragraph 2, to consider what measures could be taken to put an end to the massacres and deportations; to obtain reinstatement of the refugees and restoration of confiscated property; and to afford "the safeguard of a treaty for the protection of minorities."

The Council discussed the question at a meeting on April 19th, 1923. The Bulgarian representative made a statement, according to which there were 99,000 Greek refugees in Western Thrace, forming 53 per cent of the total population. These Greeks were being installed in Bulgarian villages, whence the Bulgarian inhabitants were being deported. He suggested that the mandate of Western Thrace be withdrawn from Greece and exercised by the League of Nations. The representatives of Greece contended that the Bulgarian inhabitants of

[12] *Ibid.* [13] *Official Journal,* June, 1923; p. 642.

Western Thrace supported the activities of the Macedonian bands of *comitadjis* and that the Greek Government had been forced to deport such people to Crete or other islands. He also denied that Greece was trying to eliminate the Bulgarians in Western Thrace and to change the racial character of the territory, and explained that the Bulgarians were an unimportant minority. He pointed to the difficulties caused by the exchange of Greek and Moslem populations and stated that as soon as normal conditions again prevailed the Bulgarians "provisionally removed" would be permitted to return to their homes.[14]

The Council, on April 21st, 1923, disposed of this thorny question by referring it to the Conference of Ambassadors on the ground that Bulgaria had renounced its sovereignty over Western Thrace in favor of the Principal Allied Powers and that the Treaty of Sèvres transferring this sovereignty to Greece had not yet been ratified. The resolution of the Council invited the Governments to keep it informed of any future action taken on the question; noted the declaration of the Greek Government to the effect that the deportees would be authorized to return home as soon as the causes which gave rise to the exceptional measures "had disappeared"; and requested Dr. Nansen "to do all in his power, as Commissioner for Refugees, to improve the condition of the persons expelled from Western Thrace." [15]

According to a report of the representative of the League High Commissioner for Refugees in Greece, the deportees from Bulgaria to Thessaly numbered about 3,000 and were scattered in forty-nine villages; they received a third of a kilo of bread per day and were "in certain respects better off than the Greek refugees." [16] The number and condition of Bulgarian deportees on the Aegean Islands was not discussed. According to a later report [17] 6,000 Bulgarians had been repatriated by October, 1923, but were unable to occupy their homes since these had been occupied by Greek refugees from Asia Minor.[18]

COMMENTARY

The Bulgarian situation with reference to its neighboring states concerning the Macedonian dispute appears to be dragging along in much the same manner as did the Albanian frontier question, which, at the end of four years, led to the Janina murders and the bombardment of

[14] *Official Journal,* June, 1923; pp. 561-565. [15] *Ibid.;* p. 578.
[16] *L. of N. Monthly Summary,* July, 1923; p. 132.
[17] Report by the High Commissioner for Refugees; March 10th, 1924.
[18] *Le Temps* of February 7th, 1924, states that the Bulgarian population of Western Thrace was reduced to one-quarter of its number at the end of the war in 1918.

Corfu. It appears to offer an opportunity for the Council to apply the interpretation of Article 15 recently rendered by the Commission of Jurists and to act with expedition in this war-making area.

The circumstances in Western Thrace suggest the following observations: The Greek Minority Treaty was not considered valid because the Treaty of Sèvres had not been ratified. But the occupation of Western Thrace by Greece was considered lawful, although allotted to Greece by that Treaty. While duly appreciating the misery of the Greek refugees' situation, it is not without interest to note the fact that one class of refugee—the Greek—was helped at the cost of creating another class of refugee—the Bulgarian.

The League of Nations appointed two members on a Mixed Commission for exchange of Greek and Bulgarian populations. It would seem that this Commission failed to promote understanding between Bulgaria and Greece, since it could not prevent the deportation of Bulgarians.

CHAPTER XVII

NATIONAL ASPIRATIONS OF EASTERN GALICIA

Galicia lies north of the Carpathian Mountains and is divided into two distinct regions. Western Galicia is inhabited largely by Poles and has for its capital Cracow. Eastern Galicia has a population of 4,500,000, of whom 3,200,000 are Ruthenian, about 1,000,000 are Poles and the rest are Jews. It is a fertile country, rich in natural resources, chiefly oil, and has an area of about 50,000 square kilometers. The capital is Lemberg, with nearly 200,000 inhabitants. Galicia—the old kingdom of Halicz—was annexed to Poland in the fourteenth century, and allotted to Austria when Poland was partitioned in the Eighteenth Century. As an Austrian province, the country had a certain degree of autonomy. The Ruthenians, scattered in Galicia, Northwestern Hungary, Bukovina and Bessarabia, are of the same race and speak the same language as the Ukrainians of Southern Russia, whose country lies east of Eastern Galicia. The Ukrainians of Russia, numbering about 25,000,000, have asserted their claim to an autonomous Ukrainian state, since 1900. The center of their propaganda was Lemberg. In 1917, Russian Ukrainia proclaimed its independence, and Eastern Galicia followed the example in 1918.

The Ruthenian members of the Austrian Parliament declared, in October, 1918, wher Austria was breaking up, that they would rather fight and die than be annexed to Poland.[1] That declaration won them the promise of self-determination under Mr. Wilson's fifth point, "that the interests of the populations concerned must have equal weight with the equitable claims of the government whose title is to be determined." How the promise was kept is the subject of this narrative.

THE STRUGGLE FOR CONTROL

Immediately after the collapse of the Austro-Hungarian Empire, on October 28th, 1918, a meeting of Austrian-Polish sympathizers was held in Cracow. Its first task was to establish a Polish Liquidation Commission which undertook to decide the fate of both Eastern and Western Galicia. This Commission accepted in practice Mr. Wilson's thirteenth point concerning an independent Polish state which should include the territories inhabited by an indisputably Polish population, by annexing Western Galicia to the new Polish State. But they rejected this principle for Eastern Galicia. Under the leadership of a party called the

[1] *A History of the Peace Conference of Paris,* Vol. IV; p. 95.

National Democrats, the Liquidation Commission decided to transfer its headquarters to Lemberg, the capital of Eastern Galicia, and begin the annexation of that country. Meanwhile, the Ruthenian members of the Austrian Reichsrat in Vienna had summoned a conference of representatives of all Ruthenians in the territory of Austria-Hungary with the intention of creating a Ukrainian state. The conference was held on October 18th, 1918, and the Socialist element which desired reunion with Russian Ukrainia was defeated. But a National Council was created which proceeded to exercise the right of self-determination for the Ukrainian people. On November 1st, 1918, Ukrainian troops occupied the Government buildings at Lemberg and assumed control of the government of Eastern Galicia. On November 2nd, 1918, the Polish Liquidation Commission, which had removed its headquarters to Lemberg, organized the Polish inhabitants and attempted to wrest the government from the Ukrainian National Council. Fighting then began and continued during the greater part of the Peace Conference.

POLAND DEFIES THE ALLIED POWERS

Austria, by Article 91 of the Treaty of St. Germain, renounced its rights and title over Eastern Galicia in favor of the Principal Allied and Associated Powers, which were to decide the fate of the territory.

Thus the question of which group to recognize—the Ukrainian or Polish—came before the Supreme Council at an early date by reason of the fighting. Each party had by January, 1919, raised an army. In February, an Inter-Allied Commission succeeded in establishing a truce between the two belligerents, but this lasted only a few days. On March 19th, the Supreme Council sent a message to the leaders, requesting them to cease hostilities and offering to hear the representatives of both sides. On March 24th, the Ukrainian National Council accepted, but the Polish Committee did not reply. On April 2nd, the Supreme Council decided to establish an Armistice Commission to settle the dispute, and sent the following telegram to the Polish Minister of Foreign Affairs: [2]

"It will be recalled that in its note of the 19th March the Conference suggested to both the Polish and Ukrainian Governments, that a suspension of arms should be arranged in Eastern Galicia pending the discussion at Paris of an armistice under the mediation of the Allied and Associated Governments. To further these objects the Conference has decided to appoint an Armistice Commission to hear the representatives of the two belligerents, and this Commission will begin its sittings in Paris as soon as

[2] *A History of the Peace Conference of Paris,* Vol. I; p. 336.

it is informed that a truce has been concluded and that accredited Polish and Ukrainian representatives are ready to present their views. To save time, it is suggested that representatives be appointed from the Polish Delegation now in Paris. If the plan of mediation proposed by the Allied and Associated Governments is to be carried out, it is essential that the Convention for the suspension of arms which is now being arranged in Eastern Galicia should contain nothing that would prejudge the nature of the future Armistice, and the Allied and Associated Governments cannot doubt that in the negotiation for a suspension of arms the Polish Government will act upon this principle."

This Commission, under the presidency of General Botha, prepared a draft of an Armistice Convention and presented it to the two governments on May 12th, 1919. The Ukrainians accepted the proposal, but the Poles rejected it on the ground that the safety of Poland required that a Polish military occupation of Eastern Galicia be authorized. The Supreme Council sent a second telegram to the Polish Government, reading as follows: [3]

"The Council feel it their duty, therefore, in the most friendly spirit but with the most solemn earnestness, to say to the Polish authorities that, if they are not willing to accept the guidance and decisions of the Conference of Peace in such matters, the governments represented in the council of the Principal Allied and Associated Governments will not be justified in furnishing Poland any longer with supplies or assistance. If it is her deliberate purpose to set at naught the counsel proffered by the Conference, its authority can no longer, it is feared, be made servicable to her."

To this telegram General Pilsudski replied, justifying the Polish occupation by the fear of a Bolshevist invasion,[4] in the event that the Paris negotiations failed. This argument proved successful, for on June 25th, 1919, the Supreme Council permitted Polish troops to occupy Eastern Galician territory as far as the Zbrucz River; and authorized the Polish Government to establish a civil administration with autonomy, and political and religious freedom. The final decision was to be left to the people by popular vote. On November 20th, 1919, it was proposed that Poland should have a mandate over Eastern Galicia for a period of twenty-five years, at the end of which time there was to be a plebiscite. To this proposal the Poles objected, and the Supreme Council, in December, 1919, left the question undecided, permitting a Polish occupation, apparently without any further regulations.

It will be observed that this method of fulfilling its promise necessitated that the Supreme Council take the following course: (1) To

[3] *A History of the Peace Conference of Paris,* Vol. I; p. 337.
[4] Chap. XXI; p. 388.

grant the Ruthenians the abstract right of self-determination; (2) to limit later this grant to autonomy under Polish protection; (3) to hold out the prospect of a plebiscite at the end of a quarter of a century; (4) and to permit a Polish army to occupy the territory, as the protecting arm of the Polish State.[5]

PROTECTION BY POLAND

This decision in favor of Poland, while seeming to grant freedom to Eastern Galicia, resulted in the Polish Government acquiring full control. Realizing the hopelessness of the situation, the Ukrainian National Council turned to the League of Nations. Their appeal was referred to a *rapporteur,* M. Hymans (Belgium), who, on February 23rd, 1921, reported to the Council as follows: [6]

"According to the statement of the petitioners, the peoples of Eastern Galicia are unable to appeal for protection to the Minorities Treaty signed by Poland, since that Treaty is only applicable within the frontiers of the Polish State, nor to the provisions of the Draft Mandate, drawn up in 1919 by the Peace Conference, for that draft has been abandoned, nor yet to the guarantees promised by the Hague Convention to populations inhabiting districts which are placed under military occupation, since that Convention is of prior date to the reconstitution of Poland. What, then can the League of Nations do, and what ought it to do? * * *

"In default of a formal and definite Mandate, it is with the assent of the Principal Allied Powers that Poland has occupied and continues to occupy Eastern Galicia. It is, therefore, the duty of these Powers, in the exercise of the sovereignty which is, at any rate provisionally, conferred upon them by the Treaty of St. Germain, to investigate all complaints, such as those which have reached us, and to draw such practical conclusions from them as they may think fit.

"It is therefore our duty to transmit to them the documents which we have received. For this reason I ask the Council to accept the suggestion contained in the Memorandum, which has been distributed to us. We must draw the attention of the Principal Powers, which are signatories of the Treaty of St. Germain, to the documents in question." * * *

The Council accepted this report and referred the matter to the Allied Powers. This report and decision, coming early in the history of the League, should be noted in the following particulars: (1) The Ukrainians caught between the upper millstone of not being properly annexed to the Polish State and the lower millstone of not being in a mandated country, were to be ground down under oppression because the new diplomacy of the League was as helpless in the face of a technicality

[5] For detailed account of the dispute over Western Galicia see *A History of the Peace Conference of Paris,* Vol. VI; pp. 266-274.

[6] *Official Journal,* March-April, 1921; p. 132.

as the old diplomacy was wise in its application. The superiority of moral responsibility and moral influence did not materialize. (2) The Principal Allied Powers, acting together in the Supreme Council, had created the situation and permitted the Polish occupation; therefore, these same Powers acting together in the Council could do nothing but recommend to themselves what action should be taken. (3) The representatives of these Powers sitting in the Council decided to refer the matter to other representatives of these same Powers sitting in the Conference of Ambassadors, indicating the limits of the power of the Council.

EASTERN GALICIA AND THE LEAGUE

But the Ukrainians, thus estopped in Europe from obtaining a hearing of their grievances, obtained one by way of Canada. It appears that some Ukrainian settlers in Canada had learned of the plight of their countrymen in Eastern Galicia and had succeeded in interesting the members of the Canadian Delegation to the Second General Assembly. One of the members called the attention of the Assembly to the petitions from the Ukrainian population to the Canadian Government and suggested that the Assembly request the Supreme Council to expedite its decision. He then introduced the following motion: [7]

"That the Assembly of the League of Nations expresses the wish that the Council of the League draw the attention of the Supreme Council to the desirability of determining at an early date the status of Eastern Galicia."

This resolution was referred to the Sixth Committee. The Polish representative raised objection to the use of the word *status*, preferring *situation*, and this matter had to be settled by an opinion from legal experts.[8] Then the question was raised by Mr. Fisher (Great Britain), whether it was in good taste for the Assembly "to pass facile resolutions. There was no need for it, in order to increase its prestige, to remind the Principal Allied and Associated Powers of the thorny problems they had to solve. Moreover, it was by no means certain that a prompt solution of the question of Eastern Galicia would be likely to settle matters, or was necessary to the maintenance of peace." [9] The opinion was prevalent in the Committee that to remind the Supreme Council of its duties would be an act of disrespect. The motion was, however, reported to the Second Assembly, which adopted it without

[7] *Records of the Second Assembly;* p. 274.
[8] *Ibid., Committees,* Vol. II; p. 537.
[9] *Ibid.;* p. 539.

debate on September 27th, 1921.[10] On October 25th, 1921, the Council duly considered the matter and forwarded it to the Allied Powers.[11]

It will be observed, from the discussion of this question in the Committee, that the correct relationship between the Assembly and the Supreme Council and the prestige of the League were matters of concern to the Committee which scrupulously refrained from considering the plight or rights of the Ukrainians.

On September 13th, 1922, the Council was informed by its President that a petition had been received from the Ukrainians in Eastern Galicia. The Council decided that it should be forwarded to the Conference of Ambassadors (successors to the Supreme Council), according to the precedent established.

The Canadian delegation, however, was not discouraged. When the Third Assembly met in 1922, it presented the following resolution: [12]

"The Assembly of the League of Nations renews its wish, expressed in the resolution adopted by the Second Assembly on September 27th, 1921, that the Council of the League draw the attention of the Principal Allied and Associated Powers to the desirability of determining at an early date the status of Eastern Galicia."

The record of the League on behalf of the Ruthenians consists, therefore, of the courtesy of the Council in forwarding documents and complaints to the Allied Powers, and of the Assembly in passing two resolutions requesting the Conference to take action.

DECISION OF THE CONFERENCE

The Conference, however, was not in haste and did not render its decision until March 14th, 1923, two years after the first communication from the Council. The decision stated: [13]

"The British Empire, France, Italy and Japan, signatories, together with the United States of America as Principal Allied and Associated Powers, to the Treaty of Versailles:

"Whereas, according to the terms of Art. 37, par. 3, of the above Treaty, they shall establish the frontiers of Poland, not specified in that Treaty,

"Whereas the Polish Government, on February 15th, 1923, addressed an appeal to the Conference of Ambassadors, that the Powers represented on

[10] *Records of the Second Assembly;* p. 458.
[11] *Minutes of the Fourteenth Session of the Council;* p. 174.
[12] *Records of the Third Assembly;* p. 114.
[13] *Publication of the Western Ukrainian League of Nations Association,* June, 1923.

this body make use of the rights conferred on them by the above Article. * * *

"Whereas, according to Art. 91 of the Peace Treaty of Saint Germain-en-Laye, Austria renounces in favor of the Principal Allied and Associated Powers, all rights and titles over the territories which previously belonged to the former Austro-Hungarian Monarchy and which being situated outside the new frontiers of Austria, as described in Art. 27 of the above Treaty, are not subject to any other provision.

"Whereas, Poland has recognized that as concerns Eastern Galicia, the ethnographical conditions make a regime of autonomy necessary,

"Whereas the Treaty between the Principal Allied and Associated Powers and Poland signed June 28th, 1919, provides in all territories placed under Polish sovereignty special guarantees in favor of racial, linguistic or religious minorities,

"Whereas, concerning its frontier with Russia, Poland has entered into direct negotiations with that state with a view to determining the boundary line. * * *

Have entrusted to the Conference of Ambassadors the settlement of this question.

"Consequently the Conference of Ambassadors:

"1. Decides to recognize the frontiers of Poland as follows:

(a) with Russia, the line traced and decided by agreement between the two States, and on their responsibility on November 23rd, 1922, * * *[14]

"2. Decides to recognize, and Poland accepts, all rights of sovereignty over the territories between the above defined frontiers and the other frontiers of Polish territory; under reserve of the provisions of the Peace Treaty of Saint Germain-en-Laye concerning duties and obligations incurred by states through the transfer to them of territories of the former Austro-Hungarian Empire."

The determining factors in this decision to place Eastern Galicia under the sovereignty of Poland appear to have been the following: This territory completes the boundary line which gives to Poland a united front, joining Roumania. France desired this arrangement for military purposes against Russia, for an independent state of Eastern Galicia would have interrupted the approach between Poland and Roumania. The refusal of Poland to obey any other decision of the Conference, knowing that France would not resort to extreme measures to enforce such a decision, made impossible any other practical outcome. The military occupation accorded to Poland in 1920 was understood by Poland to mean that if it made good use of the opportunity, at the end of considerable delay, its activities would be legalized.

It will be observed that the Conference made no reference to the

[14] The frontiers are those laid down by the Treaty of Riga, October 12th, 1920, and include Eastern Galicia in Poland. Chap. XXI; p. 388.

resolution passed by the Assembly nor to the communications from the Council, although it does refer to communications from Poland; that it implies that the ethnographical conditions are being considered; and that it states that the Ukrainians will be placed under the protection of the Minority Treaty signed by Poland.

GRIEVANCES OF THE UKRAINIAN PEOPLE

The extent to which this decision has afforded protection to the Ukrainians as a minority in Poland appears in an appeal sent to the League of Nations six months after the decision was made. The appeal, signed by the National Ukrainian Council, contains the following allegations: [15]

(1) That the policy adopted by the Polish Government proves that there is no intention to grant autonomy, but to observe the same policy of violent "Polonization" as before March 14th, 1923, as is shown by the fact that the country is divided into three districts in a manner to destroy its unity; (2) that amnesty has not been granted to the members of the former Ukrainian Government who opposed Polish rule; on the contrary, obstructions have been placed in the way; (3) that "the Ukrainian population does not enjoy equal civil and political rights with the Polish, as it did not participate in the election of the Polish state or constitution, but was forced to accept them." The Ukrainian population has no representation in the Polish Diet, as it did not participate in the last election which occurred before the transfer of Eastern Galicia to Polish sovereignty. (4) That the Ukrainian language has no rights in administrative offices and before the law, these rights having been abolished and all Ukrainian institutions forced to use the Polish language.[16] (5) That the Greek-Catholic and Greek-Orthodox church, *i. e.*, the churches of the Ukrainian population, are persecuted, including the closing of churches and confiscation of ecclesiastic properties. (6) That the situation of the Ukrainian schools does not even comply with the very modest and absolutely insufficient

[15] *Petition of the Ukrainian National Council of Eastern Galicia* to the League of Nations; September 1st, 1922.

[16] It is reported that a bill has been introduced regulating the use of the Ukrainian, White Russian and Lithuanian languages in Poland in reciprocal dealings with the central and local government authorities and in courts and schools. Polish will remain the language of the Government. From the reports it is not clear what concessions have been made, but the mere fact that the Polish Government is dealing with this question is a move in the direction of peace. The Ukrainians and White Russians, however, oppose the bill on the ground that they alone have the right to decide about the territories they inhabit and will not accept any favors from the Polish Government. (London *Times*, July 5th, 1924.)

demands of the agreement of June 28th, 1919, inasmuch as the Polish Government does not found any official schools and prohibits the use of existing Ukrainian schools; also that the elementary and secondary schools founded for the Ukrainians under the Austrian rule are transformed into Polish schools or are abolished. (7) That Ukrainian clubs are not permitted and are persecuted by the Polish Government, to the extent of prohibiting humanitarian and singing clubs. (8) That Ukrainian dominions are being colonized by Poles; and agrarian laws have been passed which exclude the Ukrainian peasants from acquiring ground; and (9) that political parties are persecuted and neither the right of public meetings nor liberty of the press exist; further, there have been groundless arrests of citizens of Ukrainian nationality, and in general, "boundless despotism" is exercised by Polish authorities toward the Ukrainian population.

Another petition to the League of Nations was sent in September, 1923, and asks for protection. It closed with the appeal that the League

"Send a commission of the League of Nations to East Galicia, Volhynia, Podlachia and Polissia to enquire in detail into the situation of the Ukrainian population and of other non-Polish populations, and on the results of the research to force the Polish Government to fulfill immediately the engagements undertaken by Poland according to international treaties and declarations."

That the policy of oppression as alleged by the Ruthenians began immediately with the military occupation of Poland is indicated by the following quotation from the Cracow *Czas* of June 13th, 1920:

"The manors in East Galicia, ruined by the war, are being sold by their owners, who are unable to restore them, to peasants, but only to Polish peasants from the West. For the Polish buyer the price of the best black-soil has been fixed so incredibly low that by selling a cow he can buy three or four acres of land. And the peasants from the West have come in crowds to buy it. Joy filled the heart at the sight of this elemental movement fit to create a Polish majority in that beautiful country. But what was the result? Among the peasants buying the land only too many were unfortunately found who, having bought it for 3,000 marks an acre, immediately resold it to Ruthenes for 6,000 or 7,000. * * * Seeing that the Polish peasant buyers cannot be trusted, those who sell the land have now to reserve for themselves a right to pre-emption in order to secure the land from passing out of Polish possession."

The following complaints were noted by the writer when in Eastern Galicia in the fall of 1923. The Ukrainian Teachers' College at Lemberg had been closed; the Polish Teachers' College operated a Ukrainian branch, open only to women, and limited to forty in number; Polish

teachers were supplanting Ukrainian teachers in the normal schools and the Ukrainians were refusing to send their children to these schools. Students who acquired degrees at Ukrainian private schools were not admitted to public high schools, and universities only admitted Ukrainian students who had served in the Polish army. Ukrainians were not permitted to use their language in the courts, and interpreters were not provided; newspapers printed in the Ukrainian language were permitted, but were censored, appearing daily with large white spaces where articles had been deleted. There was no established standard for censorship, and the officials order removed whatever they do not like. Insurance must be obtained through Polish banks, and as insurance is an important element in the banking business, the discrimination is driving out the Ukrainian banks. Polish peasants received loans from the Polish banks for taxes, crops and other farming necessities, but Ukrainians found it difficult to obtain such loans. The Ukrainians proposed as a minimum remedy: (1) Educational equality with a right to Ukrainian schools and teachers of their own nationality. (2) Proportional representation in the Polish Diet. (3) Reform in the agrarian laws, permitting Ukrainian peasants to hold and acquire land and prohibiting the present methods of colonization. (4) The right to use their own language in courts.[17]

COMMENTARY

The struggle of Eastern Galicia is typical of the fate that has awaited and still awaits people, who have been transferred to alien control, whenever they contend for the dream of self-determination.

The struggle for a hearing concerning their rights to autonomy or independence, and the course taken by the Powers to whom the Ukrainians appealed is typical of what awaits all minorities in powerful states, who appeal to the League or Conference. The ascendancy of state sovereignty creates ever a higher barrier to the protection of people once they are enclosed within the territory of a state.

The responsibility for the plight of minorities rests squarely upon the Allied Powers who drafted and insisted upon treaties for their protection and who now will not undertake enforcement of these treaties. That provision of the Minority Treaty which confers com-

[17] The claims of the Galicians do not seem to have come nearer realization since September, 1923. The *Manchester Guardian Weekly* of March 28th, 1924, reports unusually severe political persecution in Poland, aimed chiefly against Ukrainians.

pulsory jurisdiction upon the Court on behalf of minorities is unavailing without intervention by them or by some member of the Council. The minorities situation in Eastern Galicia is one to rise up and confound the peacemakers when it is least expected, because justice has been considered an unessential part of the settlement of that question.

CHAPTER XVIII

THE QUARREL OVER TESCHEN

The Duchy of Teschen lay south of Upper Silesia and north of Bohemia, wedged in between Czech and Polish-speaking peoples. It covered an area of nearly 2,300 square kilometers and had, according to the census of 1910, a population of 420,000, of whom 55 per cent were Polish, 27 per cent Czech and the rest German. The territory was divided into four districts, Frydek, Frystat, Teschen and Bielitz, and its capital was the town of Teschen. In the northwestern district, around Karvin, there are rich coalfields (forming part of the coalfields of Upper Silesia); and dependent upon the Karvin coal there is a largely developed industrial district. The eastern part of the territory is mainly agricultural. The Duchy was a part of the Bohemian Kingdom, in the 10th century; was conquered by Poles and reconquered by Czechs several times, and in the 14th century definitely recognized the King of Bohemia as feudal overlord. In the 17th century the line of the Dukes of Teschen died out and sovereignty over the territory passed to the Hapsburg Emperors (in their capacity of Kings of Bohemia). Under the Hapsburgs, Teschen became an Austrian province.

When the question of creating the new states of Poland and Czechoslovakia was before the Peace Conference, this little Duchy—the scene of so many wars, but never yet divided in its long history—was coveted by both of the new states. And with good reason. It is not only a very beautiful section of central Europe, rich in culture and tradition, but it possesses economic resources of no mean order. The economic unity appears to have been established between the coal fields in the western section which supplied the surrounding industries with coal, coke and gas; and the eastern section, mainly agricultural, which supplied the industrial workers with farm products. The life of the towns was dependent upon the continuance of the industries and the whole section was closely knit together by railways and roads which were the natural outcome of the labors of a peaceful and industrious people. The three races in the territory—Czech, Polish and German—managed to live together and enjoy the beauty and prosperity of Teschen.

THE QUESTION BEFORE THE PEACE CONFERENCE

But neither new states nor Peace Conferences are respecters of ancient harmonies, and the Peace Conference of 1919 was no exception,

when it was presented with the rival claims of the two new states. The Czech claims were as follows: (1) That, on historical grounds, Teschen formed part of the crown lands of Bohemia; (2) that 55 per cent of Polish-speaking people in the territory included Silesians and immigrants and did not constitute a majority; (3) that economically, the coal fields could not be separated from the industries which had grown up about them outside of Teschen territory; (4) that the Oderberg-Jablunka railway line was indispensable for economic and military reasons as connecting Slovakia with Bohemia-Moravia; (5) that the Poles would not be deprived of coal, since a portion of the Karvin mines extended into Polish territory and required only developing by Poland; and (6) that economic divisions could not be surmounted by special treaties; but on the contrary the Czechoslovak State must have complete possession of the mines and railways which were important to its economic existence.

The Poles admitted that Frydek, in the heart of the coal fields, belonged to the Czechs, but insisted upon having Bielitz, Teschen and Frystat, for reasons of national sentiment; also, the Jablunka railway, which was the main line between Berlin and Budapest.

While these contentions were being argued in Paris, the situation in Teschen was as follows: When Austria collapsed, in October, 1918, the Polish National Council and the Czech National Committee assumed provisional control in the midst of great confusion. They concluded an agreement in November, 1918, establishing a provisional line on an ethnographic basis. According to this division, Teschen, Bielitz and the Polish communes of Frystat were allotted to Poland. A central committee, consisting of seven Poles and seven Czechs and five Germans, was organized to protect the district; while the coal mines were placed under the mining administration of the neighboring Czech district of Mahrisch-Ostrau, but the Poles were permitted to have a representative in the administration. The line thus adopted gave twenty-six coal pits to the Czechs and ten to the Poles.

This arrangement was understood to be temporary, pending a decision by the Peace Conference. Nevertheless, on December 10th, 1918, the Polish Government announced that the election of deputies to the Warsaw Diet, from the portion of Teschen occupied by Poland, was to take place in January, 1919, and mobilized troops along the frontier to put this plan into execution. The Prague Government sent an emissary to Warsaw to protest, but he appears to have been arrested on the way by Polish authorities. On January 22nd, 1919, the Czechs

arrived in Teschen and demanded complete evacuation by Polish troops. After some skirmishes, an armistice was concluded and the frontier line of February 5th was established.

Meanwhile, on February 3rd, the Peace Conference appointed an Inter-Allied Commission, of which M. Noulens (France) was made President, to make recommendations for a settlement. This Commission recommended that provisionally the Czechs should hold the mining districts and the Oderberg-Jablunka railway line north of Teschen, while the southern part should be held by the Poles. The local administration was to be carried on as the two commissions had agreed in November, 1918. These recommendations were accepted by the Conference, and on February 25th, 1919, a military convention was drawn up, fixing limits beyond which neither troops should pass. By this time, however, a matter which had appeared to be capable of peaceful solution had become an acute conflict between the governments of Prague and Warsaw, and created an estrangement.[1]

THE PLEBISCITE AND ITS ALTERNATIVE

The Peace Conference had before it three alternatives for a definite award: (1) To constitute the Duchy a neutral state, as it had been in actuality for many centuries; (2) to divide the country ethnographically; or (3) to divide it along economic lines. By procrastination and bungling, relationships between the two countries were further embittered. On September 27th, 1919, the Supreme Council decided to hold a plebiscite for the whole Duchy and appointed a commission which drew up the conditions for voting. The right to vote was to be given to all persons without distinction of sex who were over twenty years of age and had resided in the plebiscite area since a date prior to August 1st, 1914. The vote was to be taken by communes and was to be determined according to the majority of votes cast in each commune. On January 30th, 1920, the Plebiscite Commission arrived and encountered serious difficulties due to propaganda, racial friction and national sentiment. Unrest also appeared among the workmen. The Commission appointed a Committee of Conciliation, consisting of a representative of the mines, of the Czech Plebiscite Committee, and one from each of the political parties. In May, 1920, instead of conciliation, a riot took place in Teschen; 11,000 miners went on a strike in the Karvin district; and the plebiscite was deemed hopeless.

[1] Chapter XXXI.

The Inter-Allied Commission, having reported these conditions, the Supreme Council, on July 10th, 1920, proposed to the two Governments that they submit the matter to arbitration. Although both states were members of the League of Nations, they declined to follow this suggestion. The Czechoslovak State declared in favor of a plebiscite; but the Polish Government was opposed; therefore, the Supreme Council agreed to abandon the idea of a plebiscite and to settle the matter by decision. On July 28th, 1920, the Duchy of Teschen was divided in such a manner that the frontier runs through the center of the town of Teschen. Czechoslovakia obtained the western section, that is, the whole of the Karvin mines, the entire railway and the suburbs of the town of Teschen on the western banks of the River Olsa. Poland obtained the eastern part of the territory and the greater part of the town of Teschen, minus a railway line and station, and minus a coal supply.[2]

THE SPIRIT IN TESCHEN

But what of the people who inhabit this area—who have developed it and presumably for whose pleasure and convenience and subsistence it exists? When the writer visited this territory in August, 1923, the spirit existing among the Poles and Czechs showed no improvement over that which had raised bayonets against one another in 1920. A peaceful and prosperous community, residents in the little town of Teschen, have become a hard, embittered people. All of the bridges over the River Olsa, but one, are barricaded and useless, and the one open bridge is occupied by Polish soldiers on one end and by Czech soldiers on the other. The street car service has been abandoned; and the line cut at the bridge is of no use to either of the territories. No one living on the Polish side can enter or leave by train without permission from the Czechs, who control the railway and own the station. Workmen, living in the Polish town and working in the Czech territory, are searched whenever they go and come to work. The customs duties are fantastic. Clothes, bought in one place and patched in another, are taxed on the purchase in one territory and on the patch in the other territory. Persons living in one country and desiring to attend the weddings or funerals of their friends have to pay duty on the flowers they take as an offering or a tribute, and many of the

[2] It appears that the consent of Poland to this division is largely due to the fact that Bolshevist troops were threatening Warsaw at the time. (See Chap. XXI, p. 338.)

floral offerings find their way into the river because the people cannot pay duty.[3]

COMMENTARY

Poland and Czechoslovakia, both created by the victory of the Allied Powers, and members of the League, established a precedent by declining to arbitrate their differences when advised to do so by the Supreme Council. This refusal necessitated an arbitrary division of territory if war, already begun, was not to continue. The Peace Conference accomplished what long centuries of racial conflict had failed to achieve—the division of Teschen, without regard to the wishes of its inhabitants. In practice it disposed of Mr. Wilson's theory that "peoples and provinces are not to be bartered from sovereignty to sovereignty as if they were mere chattels and pawns in a game"; for this territory was divided in the great quest for national security wherein natural resources and railways are of first strategic importance. It can scarcely be contended that the principle that settlements shall be "made in the interest and for the benefit of the populations concerned" was in any respect followed.

[3] The situation created by the bisected town gives rise to strange stories, one of which, recorded in the "Kattowitzer Zeitung" (appearing in Polish Upper Silesia) of January 16th, 1924, is characteristic: "Teschen has but one cemetery, on the Polish side; it has to be used by both Poles and Czechs. But a dead Czech, to pass the bridge on his last way to burial, requires a Polish visé, obtained from the Polish Consulate."

CHAPTER XIX

ASIATIC PROBLEMS BEFORE THE LEAGUE

ARMENIA

The history of Armenia extends over two thousand years of ceaseless fighting. Lying south of the Black Sea and the Caucasian Mountains it was invaded by Persians, Romans, Arabs, Seljuk Turks, Tartars, Byzantines, Osmanli Turks and Russians. Christianity was established in part of the country as early as the fifth century, but the population is exceedingly mixed both as to race—having Aryan and Semitic elements—and as to religion—including Roman Catholics, Gregorians, Protestants and Greek Catholics. In the fifteenth century, the whole country came under Turkish rule, and in the nineteenth century Russia captured part of it. After the Great War, Armenians of Russia and Turkey joined in their demands for independence and established the Republic of Erivan in March, 1918. The Republic was reported to cover about 26,000 square miles and had 2,000,000 inhabitants, this data not being precise because the frontiers were indefinite.

Viscount Cecil expressed a considerable part of European opinion when he said, in addressing the First Assembly, that there was no greater tragedy in the history of the world than Armenia, and that "the League of Nations will not be an exponent of public morality unless it does its utmost to secure this ancient people from a further repetition of the horrors to which they have been submitted." [1]

The following narrative traces the utmost influence which that "exponent of public morality" has exercised upon the settlement of this tragedy from the creation of Armenia as a free state under the Treaty of Sèvres to its elimination under the Treaty of Lausanne.

ARMENIANS UNDER THE TREATY OF SÈVRES

During the war, the Armenians had fought against the Turks in the interests of the Allied Powers and were, therefore, entitled either to share in the rewards of their victorious Allies or, at the very least, to benefit by their protection in whatever agreement was made between these Powers and Turkey. Provision, therefore, was made for the Armenians in the Treaty of Sèvres, drafted in 1920. Articles 88-93 provide that Turkey is to recognize Armenia as a free and independent state. The frontier to be fixed between Armenia and Turkey was to

[1] *Records of the First Assembly;* p. 96.

be submitted to the arbitration of the President of the United States, and the two countries agreed to accept his decision; also, to accept any stipulations he might prescribe regarding access to the sea for Armenia and the demilitarization of any portion of Turkish territory adjacent to the frontier as laid down. A boundary commission was to trace the frontier on the spot. The frontiers between Armenia, Azerbaijan and Georgia were to be determined by direct agreement between the states concerned; or, if they failed to agree, by the Allied Powers. Armenia agreed to accept, and to embody in a treaty with the Principal Allied Powers, provisions for protecting minorities and for the freedom of transit and equitable treatment for the commerce of other nations.

When these provisions were drafted the question arose of providing a mandate for Armenia. It had already been determined for the other territories disposed of in this Treaty that Syria and Cilicia should be placed under a protectorate by France; [2] while Smyrna and Thrace were to go to Greece, Mesopotamia to Great Britain and Adalia to Italy. But none of the Allied Powers was eager to accept a mandate for Armenia.[3] In March, 1920, the Supreme Council laid the matter before the Council of the League, inquiring whether it was in a position to find a mandatory Power among its members.

The Council was exceedingly wary of the proposal and not without just cause. The League had just been organized; it was without a definite budget, had no military resources and realized that moral influence and opinion would not go very far in Turkey under the prevailing conditions. These conditions were, briefly: (1) The Turks occupied a considerable portion of the territory which the Allied Powers proposed to give to Armenia; apparently nothing but a war could dislodge them; (2) the Nationalist Turks were mobilizing for the purpose of resisting the terms which the Allied Powers were drafting in the Treaty of Sèvres; (3) the way of the proposed Armenian state to the sea was blocked; and (4) the new Republic would be without resources or income, necessitating a loan.

[2] On August 7th, 1920, the Armenians in Cilicia proclaimed their independence under French Protectorate, but the territory was returned to Turkey by the Franklin Bouillon Agreement of October 20th, 1921, and this transaction is confirmed in the Treaty of Lausanne. (Chap. XXII, p. 406.)

[3] It should be noted that by the Treaty of Berlin in 1880 Great Britain assumed the rôle of protector over the Armenians and took the Isle of Cyprus as a guarantee that the Turkish *Porte* would institute certain reforms. (See *Am. J. Int. Law*, July, 1920; p. 397.) By the Treaty of Lausanne Turkey recognized the annexation of Cyprus proclaimed by Great Britain in 1914. Great Britain refused to accept a mandate for Armenia in 1920.

Under such circumstances, the Council did not feel equal to undertaking the task of finding a mandatory unless the Allied Powers were prepared to supply the expeditionary force necessary to clear the territory, and to advance the necessary funds. When these assurances were forthcoming, the League would undertake to find a mandatory state; otherwise it was prepared to discuss with the Allied Powers other measures for the relief of Armenia. These observations were sent to the Supreme Council on April 11th, 1920.[4]

The Supreme Council, however, devised another plan, and on April 25th it offered the protectorate to the United States. This decision was communicated to President Wilson, wherein the United States Government was invited to assume the mandate and to define the boundary line on the Turkish border. Upon receipt of this invitation, the President sent a message to the Congress requesting authority to undertake these obligations; and, on May 29th, 1920, it passed the following resolution:

"Resolved by the Senate (the House of Representatives concurring) that the Congress hereby respectfully declines to grant to the Executive the power to accept a mandate over Armenia as requested in the Message of the President, dated May 24th, 1920."

This resolution was based partly upon a report made by General Harbord, head of the American Military Mission to Armenia, in which he pointed out the necessity of using military forces to preserve internal order and for defensive purposes; and called attention to the political difficulties which would arise in that unsettled part of the world. He also estimated that the mandate would involve a considerable amount of expense which the United States would have to assume, thus necessitating an appropriation. American opposition to the League, which was to supervise the mandate, undoubtedly influenced this decision. Although Congress declined to approve of the mandate, the President of the United States undertook, as a personal matter, to define the boundary line, as requested by the Supreme Council.

The territory to be allotted to Armenia possessed characteristics not common to the mandates which the Allied Powers had apportioned among themselves. It possessed no oil or coal resources; it had no trade or manufactures of any particular value; its boundaries were indefinite; its government was not constitutional nor stable; its population was scattered; its territory was occupied by a Turkish army; it was intended as a buffer state to divide Moslem peoples; and it was faced with certain warfare. Any state undertaking this mandate, there-

[4] *Official Journal,* November-December, 1920; pp. 89-90.

fore, would have to evict the Turks, defend the new Republic, create a government and provide funds for its operation. The acceptance of a mandate by any country under these conditions meant certain war with Turkey and would require sending an expeditionary force into the territory of a belligerent upon whom the United States had not declared war.

THE QUESTION BEFORE THE ASSEMBLY

As no one of the Principal Allied nor Associated Powers was willing to undertake this mandate, it appeared that Armenia in theory was to be created an independent state within boundaries to be determined by the President of the United States, but that no Power was willing or ready to help Armenia put the terms of the Treaty into practice. The Armenian leaders, thoroughly alive to the impossibility of executing these terms without military assistance, then turned to the League of Nations.

Viscount Cecil (Great Britain) introduced the subject on November 17th, 1920, when he proposed that the following resolution be passed: [5]

"That the Council be requested to take into immediate consideration the situation in Armenia and to present for the consideration of the Assembly proposals for averting the danger which now threatens the remnant of the Armenian race, and also for establishing a permanent settlement of that country."

M. Lafontaine (Belgium) proposed an amendment to this resolution, appointing a committee of six members to consider and report to the Assembly what steps, if any, could be taken to put an end to the hostilities between Armenia and the Kemalists. M. Viviani (France) then introduced the following resolution: [6]

"The Assembly, anxious to co-operate with the Council in order to put an end, in the shortest time possible, to the horrors of the Armenian tragedy, requests the Council to arrive at an understanding with the Governments with a view to entrusting a Power with the task of taking the necessary measures to stop the hostilities between Armenia and the Kemalists."

These resolutions, together with the amendment, were passed on November 22nd, 1920, and the Assembly appointed a Committee of Six to consider steps to be taken to the above end. A meeting of the Council was called immediately. On November 23rd, the Council decided to send a telegram to its member states and to the United States, embodying the resolution and making the following requests:

[5] *Records of the First Assembly;* p. 184. [6] *Ibid.;* p. 191.

TO MEMBER STATES

"The Council begs your Government to state whether it will be disposed, either alone or conjointly with others, to undertake, on behalf of the League of Nations, this great humanitarian mission, a mission which, moreover, entails no obligation of a permanent nature. The Council would be grateful to receive your reply, if in the affirmative, as soon as possible, so that it may be communicated to the Assembly before the end of the present session." [7]

TO THE UNITED STATES

"The object is to find a power which will use its good offices to put an end as speedily as possible to the present terrible tragedy. The proposal does not involve any repetition of the invitation to accept a mandate for Armenia.

"While the Council does not wish to suggest the assumption of duties which might be unwelcome, it felt bound to offer to the United States the opportunity of undertaking this humanitarian task, seeing that the fate of Armenia has always been of special interest to the American people, and that the President of the United States has already agreed to delimit the boundaries of that country." [8] * * *

It will be observed that the telegram sent to member states was extremely vague, requesting them to join in a great humanitarian mission. It did not indicate whether the undertaking was to be moral, financial or military, but only specified that the obligation would not be permanent. Spain replied by offering moral and diplomatic co-operation; Brazil replied that it was willing to co-operate in conjunction with other Powers; but the other states which replied either requested specifications as to what obligations were involved or phrased their replies in terms no less vague than were those contained in the communication from the Council.

The telegram sent to the United States, however, was more definite. It proffered the leadership to the United States to put an end to the Armenian tragedy, short, however, of the mandate already refused. On December 1st, 1920, the President of the United States replied as follows: [9]

"I have the honour to acknowledge the receipt of your cabled message setting forth the Resolution adopted by the Assembly of the League of Nations requesting the Council of the League to arrive at an understanding with the Governments with a view to entrusting a Power with the task of taking the necessary measures to stop the hostilities in Armenia. You offered to the United States the opportunity of undertaking the humanitarian task of using its good offices to end the present tragedy being enacted in Armenia, and you assure me that your proposal involves no repetition of the invitation to accept a Mandate for Armenia.

"While the invitation to accept a Mandate for Armenia has been rejected by the Senate of the United States, this country has repeatedly declared its

[7] *Official Journal*, November-December, 1920; p. 90. [8] *Ibid.*; p. 91.
[9] *Records of the First Assembly*; p. 243.

solicitude for the fate and welfare of the Armenian people in a manner and to the extent that justifies you in saying that the fate of Armenia has always been of special interest to the American people.

"I am without authorization to offer or employ military forces of the United States in any project for the relief of Armenia, and any material contributions would require the authorization of Congress, which is not now in session and whose action I could not forecast. I am willing, however, upon assurances of the moral and diplomatic support of the Principal Powers and in a spirit of sympathetic response to the request of the Council of the League of Nations, to use any good offices and to proffer my personal mediation through a representative whom I may designate to end the hostilities now being waged against the Armenian people, and to bring peace and accord to the contending parties, relying upon the Council of the League of Nations to suggest to me the avenues through which my offer should be conveyed and the parties to whom it should be addressed."

In his reply, the President specified the terms of his personal co-operation. He pointed out that he could not supply a military force or make a material contribution because Congress would not approve. But he offered to mediate through a personal representative to end the hostilities, provided assurances of the moral and diplomatic support of the Allied Powers was forthcoming; and he agreed to rely upon the Council to point out the avenues through which his mediation should be conveyed to the parties concerned.

To this telegram, the Council replied as follows: [10]

"In the name of the Council of the League of Nations I thank you for your telegram of December 1st, in which you agree to act as mediator between the Armenians and the Kemalists, and add that you will nominate a representative for this purpose. The Council is deeply rejoiced at, and grateful for, your decision. The Council asks me to inform you that the Spanish Government declares itself ready to participate in any action of a moral and diplomatic character in support of Armenia, and that the Brazilian Government announces that it is ready to take part alone or with other Powers in putting an end to the present situation in Armenia. The Council is therefore requesting these two Governments to communicate directly with you as to how co-operation in this work can best be arranged. Negotiations can be opened immediately wtih the Armenian Government at Erivan. As regards the Kemalists the Council is taking steps to find out the most effective method of getting into touch with them, and will inform you further on this point as soon as possible."

It will be observed that this telegram assumed that the President of the United States would immediately undertake the duties of mediator and suggested one avenue of approach, although the telegram contains no intimation that the President's terms with regard to the Allied

[10] *Records of the First Assembly;* p. 244.

Powers had been met. This is true, notwithstanding that representatives of these same Allied Powers sat on the Council which sent this telegram, fully informed as to what was the attitude of their governments. On the contrary, the telegram was silent as to these Powers and mentions only the two governments whose consent did not meet the specifications. Nevertheless, the Assembly congratulated itself upon this happy disposition of the problem.

The Armenian Government, however, believing it would be surer of the Republic as a member of the League, applied for membership. But the Allied Powers were no more ready to invoke Article 10 of the Covenant on behalf of Armenia than they were to accept a mandate; and, on December 16th, 1920, this petition was refused on the ground that the Armenian Republic had no stated form of government, although it was representative of the people; that its frontiers were not fixed; and that its census of population was uncertain. The report to the Assembly also pointed out that if Armenia were admitted to membership in the League, that body could not exercise a mandate over one of its own members. The vote upon the admission of Armenia showed that out of forty-two states, twenty-one were against admission, eight were for admission, and thirteen abstained from voting.[11] Although the report of the Special Committee did not include reference to the fact that the Armenians had signed an agreement with Turkey which expelled their Government from that country and a Bolshevist occupation was then in progress in Russian Armenia, these dramatic occurrences influenced the Assembly in rejecting the application of Armenia.

On December 17th, 1920, a delegate from Roumania, apparently dissatisfied with the indefiniteness of the proceedings, introduced a resolution which provided that speedy and real assistance should be given to Armenian people who seemed to be on the point of perishing; and that an international expeditionary force should be raised and placed under the command of an Inter-Allied General Staff, to consist of 40,000 men made up of detachments from all of the countries belonging to the League. He declared that Roumania was ready to assist with men, material and money.[12]

Discussion of this resolution was postponed, pending a report of the Special Armenian Committee which the Assembly had appointed. Its report, submitted to the Assembly on December 19th, 1920, recommended that a military expedition would be undesirable, but that

[11] *Records of the First Assembly;* pp. 587-589. [12] *Ibid.;* p. 672.

assistance should be given to the Armenians in their struggle for independence. In the discussion, reference was made to the fact that a draft bill was before the United States Senate for opening a credit of twenty-five million dollars on behalf of Armenia, and that the League intended to act as soon as this money was at its disposal, by organizing a High Commission to direct operations in Armenia, peaceably, if possible, but by force, if necessary.[13]

As the sessions of the Assembly were closing, the Armenian Committee recommended that the Council appoint a committee which, however, should have no authority to pledge the responsibility of any member state without its consent. The Assembly then recalled its willingness to co-operate with the Council and passed the following resolution, leaving the matter to the Council: [14]

"The Assembly, recalling its decision of November 22nd, 1920, will continue to co-operate with the Council, which is entrusted with the duty of safeguarding the future of Armenia, referring for advice, if it should be necessary, to the Members of the League. The Assembly notes that, in response to the initiative taken by the League, universal sympathy has already been shown for Armenia, and that Armenia has received offers of mediation on her behalf from President Wilson, Spain and Brazil."

EVENTS IN TURKEY

While these various communications, discussions and resolutions were taking place in Geneva, real events had occurred in Turkey. On December 2nd, 1920, the Armenian Government was forced to sign at Alexandropol, a Treaty with the Turkish Nationalists by which the territory of the Armenian Republic was to be confined to Russian Armenia. By this Treaty, the whole of the territory of Turkish Armenia was to remain in the hands of the Turks, except some small provinces, including Kars, whose fate was to be decided by plebiscite. The Armenian Government, thus forcibly removed to Russian territory, appealed to the Soviet Government to intervene; but that Government promptly appropriated the Republic of Armenia. The Armenian Government, therefore, which the League desired to assist, was no longer Turkish, but Russian.

Early in 1921, President Wilson, acting under the authority of the Treaty of Sèvres, which had been accepted by representatives of the Sultan's Government, on September 10th, 1920, rendered his decision defining the Armenian boundary line on the Turkish side. This decision assigned to the Armenian Government, then exiled in Russia, some of

[13] *Records of the First Assembly;* p. 727. [14] *Ibid.;* p. 731.

the territory which the Armenian Government had already ceded to Turkey by the Treaty of Alexandropol, and which was then occupied by Turks.

In the matter of mediation, which the President accepted on certain conditions, however, there was a hitch. The question which had been Turkish in 1920, when presented to President Wilson, had, by the events just narrated, become also a Russian problem. In a letter addressed to the League, dated January 22nd, 1921, President Wilson set forth his view on the situation, especially in relation to Russia.[15] He pointed out the difficulties owing to the non-execution of the Treaty of Sèvres, which the Turkish Nationalists, with headquarters in Angora, had repudiated. He stated it to be his opinion that the Armenian question was part of the settlement of the Russian frontier question, and he deplored military intervention in Russia by other nations. Although the President had announced that he would appoint Mr. Morgenthau as the American representative to take up mediation, his letter expressed unwillingness to proceed, in the absence of assurances from the Allied Powers that they were in agreement with his views on Russia, namely, a public and solemn engagement on the part of the Great Powers not to take advantage of Russia's stricken condition and not to violate its territorial integrity. Such assurances were not forthcoming, for the Allied Powers were committed to a Russian policy of intervention; negotiations were then taking place between the Allied Powers and the Turkish Nationalists over the application of the Treaty of Sèvres, and war was imminent.

THE QUESTION BEFORE THE COUNCIL

The Council, however, having inherited the question from the Assembly, at its meeting on February 22nd, 1921, considered the matter of appointing a Special Committee. As a state of war then existed in part of the territory and there were no accredited diplomatic representatives, the Council decided not to send a Commission of Inquiry, inasmuch as it could neither collect information nor exercise political influence. The Council did, however, select three persons who were on the spot to supply it with information.[16]

On February 25th, 1921, the Council sent a letter to the French, British and Italian Governments, reminding them that the Assembly had entrusted it with the duty of safeguarding the future of Armenia

[15] *Official Journal,* January-February, 1921; p. 81.
[16] *Official Journal,* March-April, 1921; p. 118; also Chap. XXII, p. 404.

and pointing out that the changes in the position of Armenia and the discussions then in progress in London, had created a new situation of which the Council must be kept informed, if it was to carry out the wishes of the Assembly. The Council stated that it was prepared to enter into an exchange of views with these governments in order to determine its sphere of action and the methods to be adopted.[17] There appears to have been no adequate response to its appeal and the war between Greece and Turkey rendered futile any further intervention by the Council.

When the Second General Assembly met in September, 1921, and received the Secretary-General's report, the matter was revived. Prof. Gilbert Murray, recurring to a proposal contained in the Treaty of Sèvres, offered the following resolution: [18]

"That, in view of the terms proposed in March last by the Supreme Council for peace between Greece and Turkey, whereby a national home for Turkish Armenians was proposed by the Powers, the boundaries of which are to be defined by the League of Nations, this Assembly refers the subject of the national home to Committee No. 6 for their consideration."

This resolution was referred to the Sixth Committee, which recommended that: [19]

"The Assembly urges the Council to press upon the Supreme Council of the Allies the necessity of making provisions in this Treaty for safeguarding the future of Armenia, and in particular, of providing the Armenians with a National Home entirely independent of Turkish rule."

To the last sentence M. Bourgeois (France) objected on the ground that the Assembly would exceed its powers in attempting to lay down the terms of peace in any future treaty. Viscount Cecil replied by pointing out that the Supreme Council had already decided in favor of this proposition and the Assembly was merely emphasizing that such a proceeding was in accordance with its wishes. A resolution was then passed, embodying the above paragraph.

One other event should be noted: On October 13th, 1921, an agreement was signed at Kars by representatives of Angora and of Moscow, Erivan, Tiflis and Baku, in which the district of Kars and other territory, claimed by the Armenian Republic, was ceded to Turkey. The Armenians protested to the League against this agreement made by the Bolshevik Government then installed in control of the Armenian Republic, stating that it did not represent the wishes of the Republic.[20]

[17] *Official Journal,* March-April, 1921; p. 452.
[18] *Records of the Second Assembly;* p. 211.
[19] *Ibid.;* pp. 298-299.
[20] *Official Journal,* January, 1922; p. 56.

The territory thus ceded to Turkey was part of the plebiscite district mentioned in the Treaty of Alexandropol between Armenia and Turkey; and was contained within the territory given to Armenia by President Wilson's decision.

In 1922, due to the course taken by the Greco-Turkish War,[21] the Armenian question no longer concerned an Armenian Republic; for the remainder of the Armenians in Turkey had become a minority and their government was in Russia. This changed status was recognized by the Council in a resolution passed on January 14th, 1922, as follows: [22]

"In view of the fact that the sufferings of the Armenian nation have been aggravated and protracted by events which have unhappily delayed the definite restoration of peace in the East;

"In the hope that the negotiations which have now been opened between the Principal Allied Powers will enable outstanding questions to be settled in a satisfactory manner, and will lead to the restoration of peaceful conditions in regions which have so long been ravaged by war, and where acts of violence, from which the Armenian populations have particularly suffered, have continually occurred;

"Reminds the Principal Allied Powers of the resolution adopted by the Assembly on September 21st, 1921, in which their representatives took part, concerning the safeguarding of the future of the Armenian people;

"Notes with satisfaction the statements of the French representative pointing out the measures adopted by the French Government to protect the Armenian populations;

"Draws the attention of the Principal Allied Powers to the urgent need for taking all steps to ensure the protection of minorities in the Ottoman Empire and states its willingness to co-operate in any measures which may be decided upon to attain this object."

Symbolic of the transformation of the Armenian Republic into a minority was the action taken by the Council at a meeting held on July 21st, 1922, in London. An Armenian Delegation requested the Council to draw the attention of the Powers to the promise of a National Home, which promise they believed in danger of being forgotten in their new plight as a minority and as refugees. The Council decided, as this Armenian delegation was no longer official, that it could not be received without creating a dangerous precedent. In order, however, to satisfy public opinion, and inasmuch as the Secretariat was collecting documentary information concerning the Armenians, *the Secretariat might without injury to the Council receive the delegation.*[23]

[21] Chap. XXII; p. 408. [22] *Official Journal,* February, 1922; p. 109.
[23] *Official Journal,* August, 1922; p. 815.

When the General Assembly met in September, 1922, its consideration of the Armenian question was brief. Viscount Cecil proposed and the Assembly, on September 20th, adopted the following resolution: [24]

"The Assembly notes with gratitude the action taken by the Council with respect to Armenia, and recommends that, in the negotiations for a peace with Turkey, the necessity for providing a National Home for the Armenians should not be overlooked, and requests the Council to take all steps which it may think useful to secure this result."

With the adoption of this resolution and its transmittal to the Principal Allied Powers, the League ceased to struggle with the Armenian Question, and Viscount Cecil expressed the conclusion in the following observation: [25]

"Wherever you find a minority—a national, linguistic, or racial minority —in condition of disturbance and unrest, it constitutes a threat, more or less serious, to the peace of the world, and from the very kernel and foundation of the League of Nations, it results that we ought to do what we can to put an end to a state of things of that description."

On November 20th, 1922, the Turks having been victorious, and the Greeks being unable to continue the war, a Peace Conference began its sessions at Lausanne. The first treaty drafted between Great Britain, France, Italy, Japan, Greece, Roumania and the Serb-Croat-Slovene State on the one hand and Turkey on the other, was not accepted by the Turkish Government. But its provisions concerning Armenia were inserted in the Treaty signed at Lausanne on July 28th, 1923, and now in force. It does not give the Armenians a National Home, but treats them as a minority, to be protected under minorities articles. These provisions are similar to those contained in other treaties, wherein minorities are placed under guarantee of the League.[26] The "Republic" of Armenia continues in Soviet Russia under that Government.

COMMENTARY

The settlement of the Armenian question appears to have run in three channels.

The Principal Allied Powers redeemed their promise by making Armenia a Republic under the Treaty of Sèvres, but they were not willing to undertake to guarantee that Republic; they offered this opportunity to the United States which declined to take on a war

[24] *Records of the Third Assembly,* Vol. I; p. 208.
[25] *Ibid.;* p. 207.
[26] Chap. III; p. 70. The Treaty does not permit the League to have resident commissioners, and without this provision there can be no effective guarantee.

with Turkey. Then came the disaster of the Greco-Turkish War, which changed the position of the Allied Powers from that of dictators to negotiators. In the Lausanne Conference they found themselves in a position where they could not dictate terms for Armenia and sacrificed that people for less indispensable concessions to their national security.

What, if anything, could the United States have done? To accept the mandate meant almost certain war with Turkey, requiring an expeditionary force and appropriations which Congress was loath to grant. With the expulsion of the Armenian Government to Russia, it meant war with Russia under the then prevailing conditions existing between the Allied Powers and the Soviet Government. And it meant war in a region wholly unknown to most Americans on behalf of a people with whose traditions and characteristics the American people have little in common. Armenia once rescued, it would have meant garrisoning American soldiers indefinitely in that country, since there was no likelihood of the Republic surviving without some such protection. Over against these practical considerations was the vague appeal to humanitarianism which nearly half a hundred nations assembled in Geneva could neither define nor construct into a practical plan.

The League, to whom the Supreme Council left the matter while war was in progress, made a travesty out of the situation. It never admitted failure; it never openly acknowledged success; it never really accepted responsibility; it never frankly laid it down; it was never rash in its undertaking, nor was it at any time lacking in sympathy. Its consistency in words is irreproachable, and its following of the Allied Powers at all times circumspect. (1) The Assembly adopted a resolution, expressing the belief that someone of its members should take the mandate; and offered its co-operation to the Council. (2) The Council sent out a vague call to its members and Brazil and Spain responded in the affirmative. (3) The Council sent a more definite telegram to the President of the United States, who accepted leadership conditionally. (4) The Council construed this as an acceptance and sent suggestions for action. (5) The Assembly rejected the application of Armenia for membership in the League. (6) The Assembly rejected the Roumanian proposal for an expeditionary force and confined its efforts to moral influence. (7) The Assembly then congratulated itself upon its success over the leadership assigned to President Wilson, referred the details to the Council and its representatives went home less concerned about Armenia than the affairs of that unhappy people, then being evicted, warranted.

Then the Council undertook the task. (1) President Wilson defined

the boundary line, but declined to proceed with mediation unless assured that the Allied Powers agreed with his views regarding Russia. (2) They did not, and his envoy was not appointed. (3) By this time, the Turks had evicted the Armenian Government to Russia; Russia had converted it into a Soviet Republic; and had made an agreement with the Turks by which the latter received some of the territory which Mr. Wilson had assigned to the Armenians. (4) The Greeks began their offensive against the Turks and the Council considered it inadvisable to send a commission of inquiry at a time of war. (5) The Council wrote the Allied Powers, offering to exchange views. (6) When the Assembly met in 1921, it passed a resolution urging the Council to remind the Supreme Council of what it had already included in the Treaty of Sévres, then in process of being torn up by the war between Turkey and Greece. (7) Exit the League until after the Lausanne Treaty was signed.[27]

The plight of the Armenians as a result of these misadventures is unmistakable. The Free Republic of Armenia, created under the Treaty of Sèvres, is gone and a Soviet Republic, beyond the reach of League and Allied Powers alike, has taken its place. A few Armenians are established in Syria under the protection of France. But of the millions who were in Turkey, vast numbers are dead or are scattered as refugees all over the world. Thus failed the promise of the Allied Powers, the animated conversations of Assembly and Council, and the good offices of Mr. Wilson. The Turkish Government settled the Armenian Question in its own fashion and the League inherits under the Treaty of Lausanne minority duties in a land whose policy is the expulsion of minorities.

[27] On February 2nd, 1923, at a meeting of the Council, M. Hymans called the attention of the League to the fact that an International Commission was being set up to study the Armenian question upon which the United States would be represented. He proposed that the Secretariat be instructed to follow the work of this Committee and assist wherever possible, and that this collaboration would be a new proof of the League's sympathy.

It is reported that the Russian Government has offered the so-called Erivan Republic a strip of land south of Erivan consisting of 15,000 square miles to provide for Armenian refugees from Turkey. The Armenian National Delegation is appealing to members of the League to establish the refugees as permanent settlers. The amount required is stated to be between £500,000 and £1,000,000. Committees are being established in the various countries for this purpose. (London *Times*.) It is also reported that a forbidden zone for Armenians may be established in Eastern Turkey extending from Samsun on the Black Sea to Selefke on the Mediterranean Sea for the purpose of preventing the establishment of an Armenian Home to the east of this line. *(Christian Science Monitor,* April 15th, 1924.)

GEORGIA

The old independent Kingdom of Georgia was converted into a Russian province in the early nineteenth century. The country lies north of Armenia, east of the Black Sea. It is a country of ancient culture, and embraced Christianity as early as Armenia. In 1917 it declared its independence first as a part of the Federal Republic of Transcaucasia (together with Russian Armenia and Azerbaijan), then separately. The republic thus established had an area of 35,000 square miles and a population of 3,000,000. A fertile country, rich in minerals, it was desired by both Turkey and Russia and lies between these two great powers as between two millstones.

In 1918, Georgia elected a constituent Assembly and in 1920 applied for admission to the League. Its application was rejected on the ground that its frontiers were not definitely settled.[28] The country was recognized *de jure* by the Allied Powers on January 26th, 1921, and afterward by other countries, the foremost being Belgium, Poland, Austria and Roumania. On May 7th, 1920, the Soviet Republic concluded a treaty with Georgia in which its independence was recognized.

But in February, 1921, without any declaration of war, Georgia was invaded by Soviet and Turkish armies. Oil reserves appear to have been the immediate incentive for the invasion. A chief named Nagaradzi, head of the Georgian Communist Party, was made governor. In 1922, a memorandum was addressed to the Secretary-General of the League of Nations, appealing for help against the invaders. On September 15th, 1922, the question came before the Third Assembly when M. de Brouckère (Belgium) submitted the following draft resolution which was amended and adopted by the Assembly as follows:

DRAFT RESOLUTION

"The Assembly of the League of Nations, moved by the unhappy position of Georgia as a country invaded and occupied contrary to the wishes of its inhabitants, invites the Council to follow attentively the course of events in this part of the world so that it may be able to seize any opportunity which may occur to help in the restoration of this country to normal conditions." [29]

RESOLUTION AS ADOPTED

"The Assembly having considered the situation in Georgia, invites the Council to follow attentively the course of events in this part of the world, so that it may be able to seize any opportunity which may occur to help in the restoration of this country to normal conditions by any peaceful means in accordance with the rules of international law." [30]

It will be observed that the Assembly in adopting the resolution deleted the words: "As a country invaded and occupied contrary to

[28] *Records of the First Assembly;* p. 630-33.
[29] *Records of the Third Assembly,* Vol. I; p. 105. [30] *Ibid.;* p. 203.

the wishes of its inhabitants." The debate in the Sixth Committee turned, not upon measures to relieve Georgia, but upon the form of the resolution to be reported to the Assembly.

This deletion was recommended by the Sixth Committee of the Assembly, but not without protest. M. de Brouckère pointed out that Georgia was involved in some of the most serious of the League's present problems; that it was near Constantinople, Smyrna and Armenia, near both Baku and the Caspian Sea and was on the road to Central Asia. He urged, therefore, that it was not a theoretical problem to be lightly laid aside. He pointed out that if the League was requested to intervene on behalf of peace in Asia Minor it could not do so with the Caucasus problem unsolved. He asked whether the League was to say to this appeal: "We cannot grant you right, but we can give you alms."

Mr. Fisher (Great Britain) proposed an amendment to make it clear that the League was concerned with the fate of Georgia and was anxious to follow events; but in a way to avoid binding the Council to any fixed policy. Viscount Cecil supported this view, stating that the League must not undertake to redress wrongs wherever they might exist and that no practical steps could be taken. The situation, he thought, presented elements of danger; as the resolution in its original form might be construed as a defiance to the Soviet Government for which act the League could not be held responsible. He stated that gestures of defiance should not be made unless they could be supported; also the resolution might raise false hopes among the Georgians. He then proposed an amendment, omitting all reference to the fact that the country had been invaded and occupied contrary to its wishes.

M. de Brouckère insisted that the wording of his resolution intended no resort to force, but on the contrary only recognized a fact which was not in dispute. He asked whether in cases affecting Russia the League no longer dared to take right into consideration. M. Branting (Sweden) stated that if the League dared not proclaim that the Georgian people should one day or other have their independence like other peoples, it would be far from fulfilling its purpose. He stated: "There was no question here of converting this resolution into a simple expression of pity for unhappy Georgia, but of proclaiming to the world that the Georgian nation had a right to liberty, and that this was how the League regarded the situation in that part of the world, and that they should have the courage to pronounce these words, which would give the Georgian people faith in its independence and

would show it that it aroused sincere sympathies throughout the whole civilized world."

To this statement Viscount Cecil replied that "If this resolution were addressed to any Great Powers and they took no notice of it, the only result would be nothing worse than a wound to the League's *amour propre.* But were they not, under the pretext of expressing some fine feelings, about to expose Georgia to further sufferings? * * * To adopt the resolution, even in the form proposed, * * * might amount to saying to the Georgian people: 'You have right on your side: what are you waiting for to recover your liberty?' Would not that be inciting them to revolt, and a revolt would be followed by an attack of the Russian troops with all imaginable consequences?"[31]

The British point of view prevailed; and the Council was invited by the Assembly to seize any opportunity to help in the restoration of Georgia to normal conditions, provided that the means employed be peaceful and in accordance with the rules of international law.

No such opportunity seems to have occurred from the League point of view. The Georgians, however, have renewed their request for intervention. In a telegram addressed to the President of the Twenty-eighth Meeting of the Council (March, 1924), the Georgian Minister to France complained of Russian persecution and atrocities, and, basing his demand on the resolution of the Assembly, he asked that the Council raise its voice for the defense of the Georgian people.

COMMENTARY

The settlement of this controversy by the incorporation of Georgia as a Soviet Republic seems not to be in accord with the principles of self-determination which that people hoped to exercise and appeals continue to come to the League. The significant fact about the controversy when it was before the League was, that there seems to have been no discussion of the merits of the controversy and no invitation was issued to the non-member state in accordance with Article 17. Instead the debate turned upon the phrases to be included in the resolution of sympathy and the preference was given to protecting the prestige of the League. It was made clear that the League policy was "to follow events, but in a way to avoid binding the Council to any fixed policy" and that the statement of an established fact should be guarded against as constituting an element of danger to the League

[31] For discussion see *Records of the Third Assembly, Minutes of the Sixth Committee;* pp. 38-41.

in that it might be construed to be a defiance of the government which was the oppressor. That peace is not restored is indicated by the revolution now in progress in this unhappy Republic.

THE HEDJAZ

The Hedjaz is a long, narrow strip of land on the Red Sea, bordering on the Arabian desert on the west and touching Palestine on the north. The country is about 700 miles long and less than 200 wide, with a population of about 300,000. In this southern end of the strip of territory lies Mecca, the holy city of Mohammedanism. Together with other Arab provinces, this country was conquered by Turks in the sixteenth century and revolted against Turkey in 1916. It was recognized as an independent kingdom by the Allied Powers, for services rendered during the war and was one of the signatories to the Treaty of Versailles. It has not become a member of the League of Nations, having refused to ratify the Treaty. This refusal was based on objections to placing of Arab peoples in Palestine, Syria and Mesopotamia under mandates, a policy adopted by the Allied Powers in April, 1920.[32]

Articles 98-100 of the Treaty of Sèvres gave Hedjaz its independence from Turkey. They provided that Turkey should recognize the Hedjaz as a free and independent state and renounce all rights and titles over its territory as laid down in the Treaty and comprised within the boundaries to be ultimately fixed. In view of the sacred character of Mecca and Medina, the King of Hedjaz agreed to assure free and easy access to Moslems of every country who desired to go there on pilgrimages and to respect all pious foundations which might be established there by Moslems. The King also agreed to assure equality of treatment in all commercial matters to the Allied Powers and to new states set up in the former Turkish Empire and to the persons, ships and goods of nationals of states, members of the League of Nations.

In September, 1920, the King of the Hedjaz sent the following cablegram to the League of Nations: [33]

"The arrest by the French authorities of the members of the Lebanon Administrative Council, legally elected by the people, and their imprisonment and their trial by a Court Martial, is a violation of all justice and of international law. Your League is today, by its constitution the only protector of the rights and liberties of both individuals and nations, and I would therefore ask your honourable League to intervene with the French Government, in order to secure the release of the Lebanon deputies who took decisions which were fully within their rights. If the Conference

[32] In September, 1923, it was reported that the Hedjaz had applied for membership in the League, but, it seems, on condition of modification of the Arab mandates, to be discussed with the Governments of France and Great Britain.

[33] *Official Journal,* September, 1920; p. 342.

thinks it useful to have an investigation, I would ask that the Commission holding this investigation should be an Inter-Allied one. I cannot believe for one moment, as others do, that Members who are as honourable and as worthy as Monsieur Sadallah Hoyayek and his companions can be guilty of the offence with which they are charged. The League is morally responsible for this injustice, and I am confident that it will take this just request into consideration."

Although the message did not specify the Article of the Covenant invoked by King Hussein, it was clear that intervention was desired. Lebanon, on whose account intervention was requested, was not part of the Hedjaz, but was in Syrian territory.[34]

The Council referred this question to Lord Balfour as *rapporteur*, who submitted a report to the League in which he stated that the King of the Hedjaz had made a general appeal in which he had assumed that the League was dealing with a world in which the tragedies of the war had been followed by a settled peace and of which the League had been appointed guardian. He pointed out that such was not the case; that there was as yet no peace with Turkey and Syria was part of the enemy country, much of it being under military occupation; and that the mandate under which it was to be governed was not in force. He reminded the Council that it had to deal with a transitory situation, of a kind not contemplated by the framers of the Covenant, and he recommended that a reply to that effect be sent to the King of the Hedjaz.[35] This principle once established, further appeals and telegrams from the King of the Hedjaz were merely "forwarded to the members of the Council for their information." [36]

COMMENTARY

In this particular instance France appears to have acted promptly in granting a limited autonomy to this territory without intervention by

[34] For discussion of Syrian opposition to the French mandate, in which are described the decisions of the Council regarding the mandate without consulting the Assembly and description of conditions, see article by Emir Chekib Arslan, in which he states:

"As a result of many complaints, France consented to give the people a so-called Parliament. She began with the Lebanon and is now about to do the same with Damascus. But whether at Damascus or in the Lebanon, these quasi-representative Assemblies which France has deigned to give Syria are merely caricatures of Parliaments without the rights which are the essence of representative government. They are competent to discuss only those questions that the occupying authorities permit them to discuss and, moreover, their decisions are not final. In a word, they are consultative assemblies and nothing more." (*Current History*, May, 1924; p. 239.)

[35] *Official Journal*, September, 1920; p. 343.

[36] *Report of the Secretary-General to the Second Assembly*; p. 33.

the League.[37] The principle laid down by the Council, however, is of universal interest, namely, that the League is designed to preserve peace only when established by treaties and that it cannot be asked to intervene where peace is not yet secured. This intrepretation of the Preamble under which the High Contracting Parties agree to achieve international security indicates that this achievement is to be restricted to preserving the fruits of war and negotiation, however conducted.

PERSIA

Persia stretches from the Caucasus and the Caspian Sea on the north to the Persian Gulf in the Arabian Sea on the south; on the east it is bounded by Afghanistan and on the west by Turkey. The population is estimated at 10,000,000. Not much remains of the ancient kingdom of Persia which flourished in the sixth century B. C.; nor of the kingdom of the Sassanides of the early Christian era. In the seventh century the country was overrun by Arabs, and in the eleventh by Seljuk Turks, then by Mongols. In the fifteenth century Persia regained some of its former importance and has since them, through varied struggles with its neighbors, retained its political independence. In the nineteenth and early twentieth centuries the country was under the financial and commercial influence of Russia and Great Britain alternately. In the Great War the country declared neutrality, but was attacked by Russia on the north and later occupied by British troops. In 1919 an agreement was signed between Great Britain and Persia by which the former was to respect the independence of the latter and to protect it from aggression. This agreement was in force when the following events took place.

Prince Firouz, of Persia, made a complaint, on May 19th, 1920, to the League of Nations in which he alleged that the port of Enzeli, on the Caspian Sea, had been bombarded by Soviet Government vessels. His communication stated the facts to be as follows: [38]

"On the morning of May 18th, at 8 o'clock, thirteen Bolshevik vessels opened fire on Enzeli at a range of about 2 kilometers. Several shells struck the Customs House premises. Sloops were sent, under a flag of truce, to ask for an explanation. The admiral in command of this fleet stated that he had been entrusted by the Moscow Government with the

[37] Although the French Government has been in control of Syria since 1920, the French mandate came into force in September, 1923, and its first report for the period ending in July, 1923, has not yet been reviewed by the Permanent Mandates Commission. The report admits that, although Lebanon has been given a large measure of self-government, there is a demand for greater liberty and that the elections are not generally patronized by the population. *(Christian Science Monitor,* March 29th, 1924.)

[38] *Official Journal,* July-August, 1920; p. 215.

policing of the Caspian Sea, and that, as he considered that the ships and naval forces of General Denikin, which had taken refuge at Enzeli, were a source of danger to the Caspian Sea, he had undertaken this bombardment on his own initiative.

"The Admiral finally demanded the surrender of Denikin's vessels, and a temporary occupation of the port of Enzeli, pending the result of the *pourparlers* between the Soviet Government and the English Government. The following answer was given to the Admiral:

"(1) 'The Persian Government protests against the bombardment of a neutral port, undertaken without any provocation or act of aggression on the part of Persia, and without warning;

"(2) 'Denikin's naval forces, which took refuge at Enzeli, a neutral port, were disarmed and interned in accordance with International Law; nevertheless the Persian Government are prepared to negotiate with the Bolshevik forces on this subject;

"(3) 'The Persian Government cannot permit any form of occupation of Enzeli.' "

In bringing these facts to the notice of the Council, Prince Firouz made a formal protest and requested intervention by the Council under Article 11 of the Covenant, alleging that these acts very seriously threatened peace in the middle East. It will be observed that the territory of a member of the League had suffered aggression under Article 10; that a non-member state was involved, bringing into the controversy Article 17, and that the appeal for intervention was made under Article 11.

The League having taken no action other than to send a copy of the complaint to the members of the Council, Prince Firouz, on May 29th, 1920, sent a second communication in which he pointed out that he had received no information of any action taken by the League; that the Soviet Government had not yet evacuated Persian territory and that information had been received indicating further invasions. He called attention to his belief that the situation warranted a special meeting of the Council and formally requested that such a meeting be called to provide a solution.[39]

Persia, however, did not entrust the matter wholly to the League, but also entered into negotiations with the Soviet Government, which appeared to desire the establishment of friendly relations. This desire had been expressed directly, and also through M. Krassin, then in London, to the British Government, to the effect that the Soviet Government had promised to issue orders for the withdrawal of its forces from Persian waters and territory. The Persian Government had communicated with Moscow, requesting a statement of the terms of peace

[39] *Official Journal,* July, 1920; p. 216.

and was awaiting a reply when the Council met and, on June 16th, 1920, after discussion of the dispute, reached the following decision: [40]

"Whereas Prince Firouz has informed the Council of the communications recently exchanged between his Government and the Soviet authorities, and has stated the conditions which were presented to the Soviet authorities by the Persian Government, in particular on 12th June after receipt of a radio from the Soviet;

"And whereas the fulfillment of these conditions would restore the territorial integrity of Persia, the respect for and preservation of which are guaranteed by the Members of the League by Article 10 of the Covenant, and would in this respect give satisfaction to the legitimate requirements of the Persian government;

"And whereas according to declarations made by them on several occasions and through various channels, the Soviet authorities have already ordered the evacuation of Persian territory, and have asserted their peaceful intentions toward Persia:

"The Council considers that the Persian Government has acted in the best interests of peace and that it has rightly appealed to the fundamental principle of co-operation laid down in the Covenant, in asking the League of Nations to declare its willingness to maintain the territorial integrity of Persia in accordance with Article 10 of the Covenant.

"The Council decides that before advising upon the means by which the obligations proscribed by the Covenant shall be fulfilled, it is desirable, in order to give every opportunity for the success of the conversations now in progress, to await the result of the promises made by the Soviet authorities. In the meantime the Council requests the Persian representative to keep it informed of the march of events through the Secretary-General of the League of Nations." [41]

There is nothing in the published record to indicate that the Council took any action other than above noted: on the contrary, Great Britain and Persia appear to have settled the matter, the foreign office of the former preferring that the League should not intervene. Otherwise, the League would have been placed in the awkward position of not having settled the dispute, but of using its vast machinery to keep the peace between two of its principal member states about to differ upon the question of which one should help a third member state.

This decision leaves the intangible impression that the Council

[40] *Official Journal,* July, 1920, p. 218.

[41] On this decision, Dr. Levermore, in his *"First Year Book of the League of Nations"* (p. 12), comments:

"This decision of the Council averted what might have been a disagreement between England and France. French opinion seemed to be that, inasmuch as England in 1919 (August 9) had established a protectorate over Persia, it was to England rather than the League that Persia should look for help."

refrained from action by reason of the competence with which Persia was managing the settlement of the dispute, and left it to Persia to restore the respect for and preservation of Article 10, which is guaranteed by the League members. Also, the decision leaves the impression that the principles of the Covenant are to be maintained by the independent acts of certain members rather than by any concerted action which the League may take thereon. Also, it is made clear that the League will not act until the member state has exhausted its efforts to make peace, even though its port has been bombarded. The essential fact is that the League took no action on behalf of Persia, but passed a resolution congratulating Persia upon remembering its obligations under the Covenant and complimented it upon the manner in which it was settling its own problems, thus preserving the integrity of Article 10 and the peace of the world.

COMMENTARY

These four Asiatic controveries have been relatively inconspicuous, but they contain the record of four small states which appealed to the League; [42] and in this record is found the beginning of the disillusion of small states with the Covenant; for the lessons of the Covenant are quickly learned by states to whom security is an ever-pressing problem. No people animated by the desire for self-determination will be encouraged to follow the course of Armenia and of Georgia; both imprisoned as Soviet Republics; and the people of the former exterminated or scattered over the world. States bombarded, as was Persia, are likely to turn first toward a Great Power and to rely upon it or themselves, as did Persia; nor are states likely to intervene on behalf of a people under the military rule of a Great Power.

There is perhaps no clearer comment upon the failure of the machinery of the League than that expressed by the Persian delegate to the Fourth Assembly: [43]

"And now, Gentlemen, we are asking whether the founders and protectors of this great institution set an example themselves, and whether they really believe in the efficacy of their own creation, the force of its statutes or the reality of Article 10 of the Covenant.

"If they really believe in it, why do they all strengthen their positions by fresh engines of war, rather than by acts of guarantee and by the honour pledged by the 53 states members of the League?

[42] For other illustrations of the position of small states under the Covenant see Chap. XVII (Eastern Galicia), Chap. X (Fiume), Chap XI (Lithuania), Chap. III (Minorities in Albania, Latvia and Esthonia), Chap. XV (Eupen and Malmedy), Chap. VIII (Albania), Chap. XIII (Aaland Islands).

[43] *Verbatim Record of the Fourth Assembly;* Sixth meeting, September 12th, 1923.

"Why do they so often take up an attitude which weakens the authority of the League of Nations? If each state follows its own inclination in great political problems, and if the only questions studied here are health questions, or questions of technical detail, is it possible really to justify putting so many people to inconvenience and expending so much money?" * * *

CHAPTER XX

SOUTH AMERICAN QUESTIONS

BOLIVIA AND CHILE

The arm of the peace machinery established under the Treaty of Versailles has extended across the Atlantic Ocean, for the Covenant which drew South American countries within its fold also laid upon them the obligations of member states.

> The republic of Bolivia separated from Peru in 1825. In its present form it is an inland country bounded on the north and east by Brazil, on the south by Paraguay and Argentina and on the west by Chile and Peru. The area of the country is estimated to be 600,000 square miles and the population numbers about 2,500,000. Chile is a long, narrow ribbon of land on the Pacific coast, over 2,500 miles in length and varying between 45 and 220 miles in width. It touches Peru on the north, Bolivia and Argentina on the east, while its western and southern boundary is the Pacific Ocean. The population is estimated at 4,000,000.

The foundation for this dispute was laid in 1842, when the Chilean Government passed a law to the effect that all guano deposits existing in the Province of Coquimbo, in the littoral of Atacama, and in the adjacent islands, were declared to be national property. Bolivia protested against this confiscation, but without effect. In 1857, Chile sent a military expedition into the territory and established claims to territorial right. It then suggested to Bolivia that they divide the territory, and this proposal was embodied in the Treaty of 1866. A commercial arrangement was concluded, concerning a neutral strip of land which ran through the divided territory; and the treaty provided that each country was to receive half of the proceeds from the guano, from the mineral deposits, and from the export duties derived from this section. This arrangement proved to be unsatisfactory and a new treaty was negotiated in 1874 which provided that the deposits in this zone were to be equally divided between the two countries. Article 4, which figured later as a cause of war, read as follows: [1]

"The export duties to be levied on the minerals mined within the zone mentioned in the preceding articles shall not exceed those which are in force at the present time; and Chilean capital, Chilean persons and their

[1] Prof. Edwin Borchard presents a more detailed statement of this controversy in *Foreign Affairs,* September, 1922; pp. 29-48.

industries, shall not be subject to any other taxes of whatsoever kind than at present exist."

A supplemental agreement provided that disputes arising from the Treaty should be submitted to arbitration. Chilean transcursions upon the territory, however, led Peru and Bolivia to conclude a kind of defensive alliance in 1873. This alliance was kept secret and was one of the alleged grounds for the declaration of war by Chile in 1879. In the meantime, nitrate had been discovered in Peruvian territory, and Peru desired to nationalize the industry by means of high taxation and the right of eminent domain. Chile regarded this as an unfriendly act, as Chilean capital and labor were employed in the section. The Bolivian Government sought to raise taxes on certain concessions which had been made to Chileans, although the Treaty of 1874 provided that there should be no such discrimination. Chile protested; Chilean owners refused to pay the tax; Bolivia attached the property and then, by decree, cancelled the concession. Chile suggested that the matter be referred to arbitration and issued an ultimatum for a reply to be given within forty-eight hours. Bolivia did not reply within that time and the Pacific war of 1879 was started by Chile against Bolivia and Peru.

The discovery of guano in Bolivia and of nitrate in Peru, the Chilean transcursions upon Bolivian property in order to benefit by these discoveries; the fear of Peru that such activities would reach its territory; a secret defensive alliance negotiated between Bolivia and Peru; and a violation of the Treaty of 1874 by Bolivia with reference to taxation—these were the issues which embroiled the three countries in war.

THE TREATY OF 1904 AND THE ASSEMBLY

The war resulted in a victory for Chile, the Bolivian and Peruvian armies being decisively defeated in 1880. Chile was then in a position to dictate the terms of peace. The United States undertook intervention through a conference called at Arica; but Chile refused to negotiate on any terms but her own, which were to include her present possessions, being the entire Bolivian littoral, the Peruvian province of Tarapaca, and the administration of Tacna and Arica. These territories contained the most valuable nitrate deposits yet discovered in the world, also copper, silver, tin and guano.

The proposed intervention of the United States was a failure; and thus matters continued until Chile made its own terms through separate treaties with the two countries. One was the agreement with Bolivia

contained in the Treaty of 1904, and signed on October 20th. Under the terms of this Treaty, Bolivia ceded territory to Chile which deprived Bolivia of an outlet to the sea. Part of the settlement was the undertaking by Chile to construct a railway from the port of Arica to La Paz, which railway should belong to Bolivia wherever it passed through Bolivian territory. The railway was completed in 1913.

This treaty was the subject of the dispute in 1920, wherein Bolivia sought a revision on the ground that it was not final; that it had been imposed by force; and that Bolivia had a right to an outlet to the sea. Bolivia elected to submit this question to the League of Nations when, on November 1st, 1920, it sent a communication to the League, invoking Article 19 of the Covenant, which provides that: "The Assembly may from time to time advise the reconsideration by members of the League of treaties which have become inapplicable and the consideration of international conditions whose continuance might endanger the peace of the world."

Bolivia requested the Assembly to consider a revision of the terms of the Treaty of 1904, on the following grounds: [2]

"(1) That the treaty was imposed upon her by force;

"(2) Failure to carry out certain fundamental articles of the treaty which aimed at securing peace, for which failure Chile was to blame;

"(3) This state of affairs involves a permanent menace of war. This may be proved by the present mobilization of large army corps, which is being carried out by Chile on the Bolivian frontier, in spite of the fact that these countries are at peace;

"(4) As a result of the treaty of 1904, Bolivia is now entirely shut in and deprived of all access to the sea."

This communication to the Assembly stated that Bolivia was acting in full agreement with Peru, as those two countries were bound together by political and historical ties.[3] As this controversy was submitted late in the session, it did not come before the Assembly until the end of its meetings in December. On December 16th, the Bolivian delegation suggested a postponement until the Second General Assembly, which suggestion was approved.[4]

The interval, however, did not improve matters between the two countries and the controversy was placed on the agenda of the Second General Assembly. The Chilean delegation was absolutely opposed to the consideration of this dispute in any manner, on the ground that the League was without competence to revise treaties. It insisted that the

[2] *Records of the First Assembly;* p. 595.

[3] On December 2nd Peru withdrew its request for intervention in its dispute with Chile in conjunction with Bolivia and the question was not renewed.

[4] *Records of the First Assembly;* p. 580.

mere discussion of the demand would establish disastrous precedents for the future of international agreements. It pointed out that the complaint concerned a treaty of peace which had been signed seventeen years ago and was made at a moment when for twenty years there had been no hostility between the two countries. The Chilean delegation interpreted Article 19 to mean that the Assembly could *invite* the parties to a treaty to reconsider the terms of a treaty only when it had become inapplicable and when facts had been submitted in proof of such a contention. It also interpreted paragraph 1 of Article 5 of the Covenant, which requires the unanimous vote of the Assembly, as being applicable to the present dispute, and asserted that unanimous consent was impossible, as Chile would not agree to a discussion of the matter.[5]

The question then arose whether the discussion should follow the usual routine provided under Rule 14 of the Assembly Procedure and be referred to the proper sub-committee for examination. Chile opposed this suggestion, but the Bolivian representative quoted the following opinion of M. Poincaré:[6]

"Bolivia cannot be ruled out on the ground of incompetence, as the competence of the League of Nations is clearly established by Articles 3, 15 and 19 [Covenant]. No other claim of *non possumus* can be made, since, when she adhered to the League of Nations, Chile accepted the appointment of the commissions provided for in Article 5 as a permanent source of information."

Chile, however, maintained its opposition to any intervention by the League in the affairs of the new world, and a compromise was effected whereby discussion was postponed, while a special committee of three jurists examined the question. This Committee consisted of Signor Scialoja (Italy), M. Urrutia (Colombia), and M. de Peralta (Costa Rica). It reported on September 28th, 1921, to the Assembly, as follows:[7]

"The Committee of Jurists, assembled on the invitation of the General Committee of the Assembly, as a result of the request made by Bolivia, dated November 1st, 1920, in order to give its opinion on the bearing of Article 19 of the Covenant, particularly regarding the powers of the Assembly as indicated in this article, is of opinion:

"That, in its present form, the request of Bolivia is not in order, because the Assembly of the League of Nations cannot of itself modify any treaty, the modification of treaties lying solely within the competence of the contracting States;

"That the Covenant, while insisting on scrupulous respect for all treaty

[5] *Records of the Second Assembly;* pp. 45-48. [6] *Ibid.;* p. 50.

[7] *Records of the Second Assembly;* p. 466.

obligations in the dealings of organised peoples with one another, by Article 19 confers on the Assembly the power to advise (the French word in the Covenant is *'inviter'*—that is to say, 'invite') the consideration by Members of the League of certain treaties or the consideration of certain international conditions;

"That such advice can only be given in cases where treaties have become inapplicable—that is to say, when the state of affairs existing at the moment of their conclusion has subsequently undergone, either materially or morally, such radical changes that their application has ceased to be reasonably possible, or in cases of the existence of international conditions whose continuance might endanger the peace of the world;

"That the Assembly would have to ascertain, if a case arose, whether one of these conditions did in point of fact exist."

It will be observed that this question was set aside on a technicality as to its form; but the Committee of Jurists laid down the principle that members of the League could only be invited to consider the terms of a treaty or certain international conditions when the circumstances had so changed that its application had ceased to be reasonably possible or where its terms endangered peace, also that the Assembly would have to ascertain whether such was the fact.

The Bolivian delegation accepted this opinion, and in closing the matter, its representative observed that in view of the fact that the opinion of the Committee referred only to the form of the request, and did not affect its substance, the Bolivian delegation accepted the decision, but declared that it "reserved the right to submit its demand afresh to the League of Nations in accordance with the principles and form laid down by the Covenant, and at the time which it considers most advisable." [8] But the Chilean delegation, in accepting the decision, uttered a warning as to the future when M. Edwards (Chile) stated: [9]

"If Chile were to accept an invitation from the Assembly, she would be helping to establish a precedent fraught with the most disastrous consequences for the League of Nations. The Assembly would find itself inevitably constrained to extend identical invitations to all the other States which have signed treaties of peace.

"We hope that the Assembly will see that Chile's attitude is dictated, above all, by her anxiety to parry a blow aimed at a principle essential to the existence of States and to the prestige of the League of Nations, which can only flourish provided it is not forced beyond the limits set for it by the Covenant." * * *

APPEAL TO THE UNITED STATES

Bolivia did not again submit this dispute to the League, but appealed to the United States Government, requesting that the question be

[8] *Records of the Second Assembly;* p. 468. [9] *Ibid.;* p. 467.

included in the Chilean-Peruvian negotiations begun in January, 1922. In a note to President Harding, President Saavedra, of Bolivia, after reciting Bolivia's contention for a seaport and other negotiations, requested that this dispute be considered as a constituent part of the issue of the Pacific. He contended that the controversy affected Bolivia as a victim of the War of the Pacific and that it could not be settled definitely and with justice unless Bolivia's loss of a seacoast was repaired. The note further declared that the Treaty of 1904 with Chile, whereby Bolivia recognized the sovereignty of Chile over the lost seacoast, was not Bolivia's free, spontaneous act, but a decision had been made under duress. In reply President Harding expressed his regret that this dispute could not be included in part, as follows:

"In reply, I beg to explain to your Excellency that the invitation which I had the honor to address to the Governments of Peru and Chile does not contemplate a hearing before me or before the Government of the United States of the matters in controversy between these Governments.

"Having noted in the telegrams recently exchanged directly between the Governments of Chile and Peru that the idea of a meeting of representatives of the two countries for the purpose of reaching a settlement of the difficulties growing out of the unfulfilled provisions of the treaty of Ancón, either directly or by arbitration, seemed acceptable in principle to both, I invited them to send representatives to Washington for this purpose. * * *

"Your Excellency will readily understand from the foregoing that the inclusion of Bolivia in the discussion of the questions at issue between the Governments of Peru and Chile is a matter for the exclusive consideration of the two Governments concerned, and that in the circumstances I am precluded from taking the initiative you suggest."

COMMENTARY

The significant facts in the settlement of this dispute may be thus summarized: (1) Bolivia, unable to settle its dispute with Chile, invoked Article 19 of the Covenant, requesting the Assembly to consider the revision of the Treaty of 1904 between the two countries on the ground of duress. (2) The Assembly was willing to consider this dispute, but Chile objected. (3) The question was referred to a Committee of Jurists, who found a way out of the *impasse* created by Chilean opposition by declaring its form defective. (4) Jurisdiction over a question of this kind requires unanimous consent of the Assembly, and this was not forthcoming. (5) The Committee of Jurists laid down the principle that the Assembly has the power to *invite* the consideration of members of the League to such treaties only when they have become inapplicable or when they endanger the peace of the world, and that the

Assembly would have to ascertain this fact. (6) The decision that the Assembly was without power to consider the question in the form presented was, therefore, accepted by both parties. (7) The question of the application of the Monroe Doctrine or of permitting the United States to settle South American disputes was at no time involved or affected.

The decision, however, contains the only interpretation of Article 19 which has resulted from practice. (1) The Committee of Jurists called attention to the French interpretation of the word "invite" as against the English word "advise"; in the event of the former being used the Article would be much weaker than appears from the English text. (2) That in giving such advice or invitation to members of the League and signatories to a treaty to reconsider its terms, the Assembly can do so only when convinced after investigation that it has become inapplicable or that its continuance might endanger the peace of the world. (3) As such a decision requires unanimous consent, it follows that unless the member states signatories were entirely willing, the Assembly could give no such advice or invitation; as was demonstrated in this particular instance by the objection of Chile. (4) M. Edwards was not inapt in pointing out that if the Assembly placed any other interpretation on Article 19, all of the Peace Treaties would be in danger and that the Assembly would have to reopen their consideration on the request of any signatory. This decision, therefore, lays down a guiding principle for the future reconsideration of treaties, and if the precedent is followed, whatever revision of the Peace Treaties is undertaken will not be through the Assembly unless an agreement is reached in advance among the parties themselves. Such being the case, the advantage of referring the matter to the Assembly is not apparent. But the Bolivian-Chilean dispute has disposed of the theory that the Assembly can effectually take the initiative.

Any inference that the failure of the League to settle this dispute was due to its desire to recognize the Monroe Doctrine or to admit the priority of the United States Government in South American affairs is without warrant. The plain fact is that the Principal Allied Powers perceived in the precedent to be established in this case, either the safeguarding of the Peace Treaties or the tampering with treaties by the Assembly; that M. Edwards had no intention of having Chilean affairs settled in the Assembly; and that the vague phrasing of Article 19 presented a way out, without M. Edwards having to resort to the unanimous consent rule to defeat such intervention. But there is nothing in the discussion or record to warrant the inference that the Assembly

dealt with the abstraction of the Monroe Doctrine when the questions of the safety of the Peace Treaties and of state sovereignty were the vital issues.

THE TACNA-ARICA DISPUTE

Peru is bounded by Colombia and Ecuador on the north, Bolivia and Chile on the south, Brazil on the east and the Pacific Ocean on the west. The country has a coast line of 1240 miles in length and its width is between 300 and 400 miles; its population is estimated to number 3,000,000. The Provinces of Tacna and Arica lie at the point where the boundaries of Peru, Bolivia and Chile meet.

Chile, as a result of the war of 1880, was in a position to dictate terms to Peru in the Treaty of Ancón, signed by the two countries in 1883. Under this Treaty, Peru ceded to Chile the Province of Tarapaca with its immensely rich deposits of nitrate and guano. But the provinces of Tacna and Arica were to be disposed of by a plebiscite which was to be held at the end of ten years, reckoned from the time of ratification of the Treaty. During the interval the provinces were to remain in the possession of Chile, subject to its laws and authority. As a result of the plebiscite, whichever country received the provinces was to pay the other 10,000,000 pesos in Chilean silver or Peruvian soles of the same standard or weight. A special protocol attached to the Treaty was to establish the form of the plebiscite and conditions and payment of either of the above amounts.[10]

When the ten-year period expired, conditions in Peru were so chaotic that the plebiscite could not be carried out. Chile claimed that its title to the territory was final, inasmuch as it had been in possession for ten years and that the plebiscite was a mere formality. Each country then accused the other of obstructing the execution of the plebiscite. Negotiations for holding this plebiscite continued over a period of twenty years, until November, 1912, when Peru made the following proposal to Chile:[11]

"My Government desires to renew cordial and stable relations with that of Your Excellency, with the object both of national prosperity and of the satisfaction of American interests of importance. Animated by the desire to put an end to the Tacna-Arica conflict, I propose to Your Excellency that the plebiscite shall take place in 1913 and shall be celebrated under the direction of boards which shall be appointed by a commission which shall proceed by majority vote and which shall be composed of five delegates, that is to say: two Chileans appointed by Chile,

[10] *Am. J. of Int. Law*, January, 1923; p. 82.
[11] *Ibid.*; p. 83.

two Peruvians appointed by Peru, and the President of the Supreme Court of Chile, who shall preside."

The proposal concluded with a specification as to what persons should be eligible as voters, and with the statement that the Peruvian Government was ready to give the necessary credentials to a minister who would collaborate in framing a convention and who would also endeavor to effect agreements concerning commerce and navigation which would be of mutual benefit.

Chile accepted, but as the Peruvian proposal was believed to modify the terms of the Treaty of Ancón, it incurred the hostility of the people and the Peruvian Government was overthrown. This prevented further negotiations at that time; and the Chilean Government remained in possession of Tacna and Arica.

THE QUESTION BEFORE THE ASSEMBLY

This was the situation when Peru, in agreement with Bolivia, on November 1st, 1920, submitted to the General Assembly the question of the revision of the Treaty of Ancón, invoking Articles 15 and 19 of the Covenant.[12]

In support of its request the Peruvian delegation stated: [13]

"The Treaty of 1883, which took from Peru the department of Tarapaca, was imposed and maintained by force, and has not even been carried out by Chile as regards its essential provisions.

"This agreement provided that the occupation of the provinces of Tacna and Arica was to be temporary and was to terminate, subject to a plebiscite, in 1893. Since that time Chile has remained in occupation of this territory by force of arms, from time to time expelling Peruvians, not only from the provinces above mentioned but also from the Peruvian department of Tarapaca, which was ceded to Chile by the Treaty. . . . Numerous facts show that the agreement which Peru is desirous of having reconsidered and amended involves a serious danger of war. The most recent of these events are the forcible expulsion of Peruvians from the conquered and the occupied provinces, and the mobilization of the Chilean Army, which is concentrated on the frontiers of Peru and Bolivia."

The communication further stated that Peru submitted its request, in conjunction with the Bolivian dispute, and pointed out that the dispute between Chile and Peru had existed ever since the signing of the Bolivian-Chile Treaty of 1904, which gave Chile control of the whole Bolivian coast line. On December 2nd, 1920, however, the Peruvian delegation withdrew its request, reserving the right to submit the dispute at a later date. Peru was largely influenced, in the withdrawal

[12] Annex I, Covenant of the League of Nations.
[13] *Records of the First Assembly;* p. 596.

of its complaint, by the uncompromising attitude of Chile in opposing any discussion of its affairs by the General Assembly and by the direct suggestion from Chile that the two countries compose their own differences. Peru did not renew its complaint to the Assembly in 1921 and Bolivia alone maintained its position on the agenda.

INTERVENTION BY THE UNITED STATES

In December, 1921, after Chile had sustained its contention that the League should not intervene in its affairs, it invited Peru to carry out the proposal of 1912 to have a plebiscite in Tacna and Arica. Peru declined on the ground that conditions had changed and made the following counter-proposal: [14]

"Recently at Geneva the Chilean Government through its representatives, denied jurisdiction to the League of Nations to interfere in the differences existing between Chile and Bolivia on the ground that these constituted an American political problem.[15]

"In recognition of this principle, which implied, as a natural consequence, the obligation to secure its solution within our own continent, my Government, consistently following the traditions of its international policy in favor of arbitration, invites that of Your Excellency to submit together the entire question of the South Pacific, which has continued to keep them apart, to arbitration, arranged at the initiative of the Government of the United States of America, a step which, I am convinced, would assure the satisfactory solution of the question, fraught with so much danger to the peace of the continent, and put an end to all controversy, in accordance with the new tendencies toward peace and justice which today govern the world."

Chile accepted the proposal of Peru for arbitration to be arranged at the initiative of the Government of the United States and on January 17th, 1922, the Secretary of State sent to the respective Governments a note which stated that the United States Government had taken note of the suggestion that representatives of the two Governments be named to meet in Washington with a view to finding the means of settling the difficulties which have divided the two countries. The note concluded as follows: [16]

"Desiring in the interests of American peace and concord to assist in a manner agreeable to both Governments concerned in finding a way to end this long-standing controversy, the President of the United States would be pleased to welcome in Washington the representatives which the Governments of Chile and Peru may see fit to appoint to the end that

[14] *Am. J. of Int. Law,* January, 1923; p. 87.

[15] No such statement appears from the published speeches of the Chilean delegates.

[16] *Am. J. of Int. Law,* January, 1923; p. 88.

such representatives may settle, if happily it may be, the existing difficulties, or may arrange for the settlement of them by arbitration."

The representatives of these Governments met on May 15th, 1922, in Washington and agreed upon a protocol which provided that all difficulties arising out of the Treaty of Peace of October 20th, 1883, should be submitted for arbitration to the President of the United States. This choice of the United States as arbitrator has not ended the controversy; it has only settled the question of jurisdiction. Briefs have been filed with the State Department and it is reported that the President has under consideration the appointment of a commission of investigation before making a decision. In the event of a decision against the plebiscite, a new basis of settlement would have to be found.[17] On February 12th, 1923, the Secretary of State, at the request of Chile and in accordance with the rules previously agreed upon, extended the time for the submission of the respective counter cases until April 13th. On April 14th it was reported that the President might appoint a special Commission to determine whether a plebiscite shall be held, before making a decision. Inasmuch as Peru is now opposed to a plebiscite, owing to the changed character of the population due to Chilean occupation, the decision by the President of the United States is beset with difficulties; and no final award has been made at this writing.

COMMENTARY

It will be observed that Peru withdrew its request to the Assembly, thus relieving that body from making any decision; that the two Governments renewed their negotiations; and Peru suggested that the United States be requested to intervene, to which Chile agreed. The question is now in process of settlement under the good offices of the United States. In this controversy no question of the application of the Monroe Doctrine arose in the Assembly, and no action whatever was taken by that body which would lead to any inference as to its attitude toward the relationship of that Doctrine to South American affairs.

THE COSTA RICA-PANAMA BOUNDARY QUESTION

Panama, bounded on the west by the Pacific, on the east by the Caribbean Sea, on the south by Colombia and on the north by Costa Rica, has an area of 33,700 square miles and a population of about 430,000. The country separated from Colombia in 1902 and inherited the frontier dispute of the latter with its northern neighbor Costa Rica. Costa Rica has an area of 23,000 square miles and a population of 450,000.

[17] Bolivia made an effort to have its claims to a seaport included, but the claim was denied; see page 376.

This dispute concerned a boundary line, as interpreted on September 11th, 1900, by President Loubet, under an arbitration treaty which had been executed between Costa Rica and Colombia in 1896. Both Governments accepted this interpretation, as fixing the boundary line from the Pacific Coast to the Cordillera; but Costa Rica refused to accept the boundary from that point east to the Atlantic Coast. Its objection was based on the allegation that the disputed boundary line ran its entire length through territory held by Costa Rica. Accordingly, Costa Rica insisted that the line was outside of the terms of the arbitration treaty and that the award was vague as to the description of the line. In 1910, Costa Rica and Panama executed a convention in which they agreed to submit the dispute to Chief Justice White as arbitrator. When the matter came before him, the two Governments differed on the question whether he should examine the merits of the dispute. The Chief Justice did examine the merits of the controversy, namely, whether any part of the line fixed by President Loubet lay outside of the limits of the Convention of 1896. He found this to be the fact and, in 1914, fixed a different boundary line, which did not run through the disputed territory. Costa Rica accepted the award; but Panama refused.[18]

THE QUESTION BEFORE THE LEAGUE COUNCIL

The refusal of Costa Rica to accept the Loubet Line, and the refusal of Panama to recognize the White Line, continued until February, 1921, when the Costa Rican army undertook to reclaim the territory which had been awarded to it under the White interpretation. This action precipitated a crisis in which fighting began. The situation appears to have been called to the attention of the League Council while it was in session in Paris, not by either of the two parties to the dispute, nor upon complaint of a member state, but by news reports. On March 1st, 1921, in the Minutes of the Twelfth Session of the Council appears the following item: [19]

"The Secretary-General stated that he had prepared a draft telegram to be sent to the Governments of Costa Rica and Panama. It appeared from the press reports that the matter had now been satisfactorily settled and he submitted, therefore, that it was unnecessary for the Council to take any action in the matter."

[18] In 1903 the United States and Panama concluded a treaty in which the United States guaranteed the independence of Panama, thus placing it in a special relation to the question of boundaries.

[19] *Minutes of the Twelfth Session of the Council;* p. 27.

But the Secretary-General's conclusion was evidently premature, for on March 4th, 1921, the following cablegram was dispatched from Paris by the Secretary-General to the secretaries for Foreign Affairs of Panama and of Costa Rica: [20]

"Council of League of Nations now sitting in Paris has had brought to its notice certain reports from which it would appear that state of tension exists between the Governments of Costa Rica and Panama. The Members of Council feel it incumbent upon them to bring these reports to the attention of the Governments of Costa Rica and Panama States Members of the League who have solemnly and publicly subscribed to the high principle and obligations of the Covenant and to request information as to the facts." [21]

A cablegram, sent on March 2nd, by the Secretary of Foreign Affairs of Panama, arrived in Geneva on March 3rd, was forwarded to Paris and received on March 4th after the foregoing cablegram had been sent by the Secretary-General. This cablegram from Panama described the occupation of the disputed territory by the Costa Rican army; that it was done without provocation on the part of Panama and without a declaration of war by Costa Rica. It then described the reinforcement of the policy by volunteers, who attacked the invaders on the morning of February 27th, 1921, and took them prisoners; that on February 28th reinforcements of Costa Rican troops appeared and were captured, and that Costa Rican troops continued to attack the volunteer forces. The cablegram concluded as follows: [22]

"In view of the way in which the Costa Rican Government persists in attacking us in our own territory, and considering that this nation has been a Member of the League since December last, when it was accepted by the Assembly, including the vote of Panama, on behalf of my Government I denounce to the Council the repeated acts of violence committed by Costa Rica against a friendly and sister State, of whose confidence and friendship it has sought to take advantage. I am confident that its attacks against the peace of the world and against the rights of Panama deserve the punishment prescribed in such cases by the Covenant of the League.

"The Government of Panama, jealously defending its rights but amenable to any peaceful and reasonable solution, has accepted the good offices offered by the United States of America, with a view to restoring peace and law in this region of the continent. A detailed explanation of the acts which have taken place will follow by post."

It will be observed that this cablegram containing a description of the situation, asking for the application of the Covenant to the con-

[20] *Official Journal*, March, 1921; p. 215.
[21] Chap. I, p. 8, for interpretation by the Secretary-General of Article 11.
[22] *Official Journal*, March, 1921; p. 214.

troversy, and conveying the information that Panama had accepted the good offices of the United States to restore peace, reached the Council *after* the dispatch of its cablegram of intervention. The Council, therefore, immediately on the same day (March 4th) sent a second cablegram, reading as follows: [23]

"Your telegram received March 3rd has been communicated to the Council of the League of Nations. Council learns with regret that the reports which formed the subject of their recent telegram to Costa Rica and Panama Governments are well founded but it is happy to know that the United States Government have offered their good offices and that these have been accepted by the Government of Panama. The Council would be glad to be kept informed of the development of the situation."

On March 9th, 1921, the Secretary-General cabled as follows to the Secretary of Foreign Affairs of Panama: [24]

"My telegram of March 4th crossed yours of March 2nd which was safely received."

From this time (March 4th, 1921), in accordance with the second cablegram from the Council, the Panama authorities kept the League informed concerning the dispute. On March 11th they advised the League that hostilities had been suspended and that they had accepted the mediation of the United States. To this cablegram, the Secretary-General replied as follows, closing the incident: [25]

"Your telegram received March 11th will be at once distributed to Members of Council. President of Council is glad to learn that Costa Rica Government has accepted mediation of United States and that it considers that dispute is in process of settlement. He trusts that final arrangement between the two Members of the League will be successfully reached in accordance with spirit of Covenant. Council would be glad to be kept informed of any further developments."

As a result of the intervention of the United States, Panama finally agreed to accept the award made by Chief Justice White, although opposing it strenuously on the ground that the arbitrator exceeded his jurisdiction. But the United States would not agree to a reopening of the case and Panama finally acceded.

COMMENTARY

An examination of this correspondence indicates the following to have been the situation: (1) On March 1st, the Secretary-General of the League prepared a cable for the purpose of intervention, but its transmission was delayed by newspaper reports that the affair was

[23] *Official Journal*, March, 1921; p. 215.
[24] *Ibid.*; p. 217. [25] *Ibid.*; p. 218.

settled; (2) on March 4th, the news was less favorable and the cablegram was sent; (3) after its dispatch, the Council received a cablegram from Panama *via* Geneva, describing the situation and containing the information that Panama had accepted intervention by the United States; (4) the cablegram of intervention sent by the Secretary-General, and the cablegram from Panama describing conditions and announcing intervention by the United States crossed each other. Therefore, the League Council acted upon its own initiative, on the basis of public reports and not at the request of either party, from whom no communication had been received when the cablegram of intervention was sent which called the attention of the belligerents to their obligations under the Covenant and requested the facts. The cablegram renouncing intervention and requesting information as to developments, sent by the League on March 4th, was the *second* cablegram under that date and was dispatched *after* the Council was informed of the intervention by the United States. From these facts it is apparent: (1) That the League intended to intervene when it sent its first cablegram requesting observance of the Covenant; and observance of the Covenant could only mean submission of the dispute to the Council before the countries resorted to war; that in requesting the facts from the belligerents it desired to know to what extent its intervention should be applied. In taking this step, the Council disregarded the provisions of the Covenant, since it does not appear that any member of the League called its attention to the state of affairs under any particular Article of the Covenant, as is required, nor did either of the parties request its intervention. It is also evident that the Council changed its policy, limiting it to a request that it be kept informed, only after it learned that the United States had intervened and had taken the matter from the implied jurisdiction of the League.

CHAPTER XXI

THE POLISH-RUSSIAN WAR

Before its first partition in 1772 Poland was a kingdom with an area of 280,000 square miles, stretching from the Baltic Sea on the north to the Carpathian Mountains on the south. The population was not purely Polish, but included Lithuanians, White Russians and Ruthenians.[1] The final division of Poland took place in 1795, the result being that Russia received about 80 per cent, Austria 12 per cent and Prussia 8 per cent of the unfortunate country. In 1815 the Congress of Vienna reconstructed a Kingdom of Poland, known as "Congress Poland," with the capital Warsaw; this was under Russian domination and was soon incorporated into Russia. In 1915 the German army occupied part of the country and the German government formulated plans for the reconstruction of an independent Polish state. Russia formally renounced sovereignty over Poland at the Treaty of Brest-litovsk in March, 1918. After the armistice General Pilsudski assumed the military command of the country and early in 1919 M. Paderewski was elected premier and as such took part in the Peace Conferences. At present, Poland has an area of 150,000 square miles and a population of about 30,000,000, about two-thirds of whom are Poles.

The Allied Powers, at the Peace Conference, fixed the boundaries of Poland with Germany and Czechoslovakia, but did not establish a frontier with Russia. This was due to several reasons, one being that none of the Allied Powers had recognized Russia and, accordingly, they could not deal with questions concerning its boundaries; and another, the unsettled question of Ukrainian independence, making it impossible to establish whether the southeastern boundary of Poland would be with an Ukrainian state or with Russia. The Poles claimed their historic boundaries of 1772, but since these included many non-Polish people, the Supreme Council was unwilling to recognize them, and finally, in December, 1919, established a provisional frontier known as the "Curzon line." This line coincided on the whole with the eastern frontier of "Congress Poland."[2]

[1] Chaps. XI and XVII.

[2] With the exception of the frontier of Lithuania, where some changes were made in the Suwalki and Grodno districts. (See Chapter XI.)

THE WAR WITH RUSSIA

When the German army retired from the eastern front in 1918, territories claimed by the Poles were occupied by Russian Bolshevik troops before Polish troops had time to reach the spot. This led to fighting, which continued throughout the year 1919. The Allied Powers, engaged in supporting the anti-Bolshevik offensives on Russia, encouraged such a movement in Poland, and for this purpose the legion of General Haller, consisting of Polish volunteers organized and equipped in France, was transported from France to the Polish front in 1919. However, at the close of 1919, several anti-Bolshevik attacks had failed, and the Supreme Council laid down the Curzon line with the intention to avoid further fighting.

This intention was emphasized in February, 1920, when the Supreme Council declared that the Allied Powers "cannot accept the responsibility of advising them [the Poles] to continue a war which may be injurious to their own interest. Still less would they advise them to adopt a policy of aggression towards Russia." [3]

The Poles, however, heedless of this warning and dissatisfied with the Curzon line, started an offensive on Russia on April 27th, 1920. They were assisted in their attempt by Ukrainian troops. The offensive began successfully, and early in May, Polish troops occupied Kiev; but shortly after this victory the tide turned and the Polish army was forced to retreat. In July, 1920, the Supreme Council met at Spa, and taking note of the precarious situation of the Poles, made the proposal that they withdraw to the Curzon line and that a conference be called in London, attended by representatives of Russia, Poland and the Baltic States. This proposal was rejected by Lenin, and the Soviet troops continued their advance in Poland, until early in August they were within a few miles of Warsaw. The Poles had, meanwhile, asked for an armistice and negotiations were proceeding. The Allied Powers, however, took action at this point. Munitions were sent to Poland, and France dispatched General Weygand to Warsaw as military adviser. His presence proved effective, and he organized a counter-offensive so successfully that the Russian army retreated, leaving to Poland nearly double the territory assigned by the Curzon line. The armistice negotiations were then resumed, and on October 12th, 1920, the Treaty of Riga was signed, confirming the territorial gains of Poland.[4]

[3] *A History of the Peace Conference of Paris,* Vol. VI; p. 319.

[4] Poland received a corridor to Latvia, thus cutting Lithuania away from Russia (Chapter XI); also, by gaining Eastern Galicia, it established a frontier with Roumania, giving both countries strategic advantages. (Chapter XVIII.)

The League of Nations had come into being and the Council had held its first meeting in January, 1920. Among the original members of the League, as mentioned in the Annex to the Covenant, was Poland. The foregoing record shows that Poland, a member state, was an aggressor in two offensives,[5] resulting in large gains of territory. The following is the record of the action taken by the League of Nations:

PROPOSED INQUIRY INTO RUSSIAN AFFAIRS

At its Third Session, held on March 12th, 1920, the League Council considered an invitation from the Supreme Council, to arrange and dispatch a Commission of Inquiry to Russia. Lord Balfour, *rapporteur,* explained that the International Labour Office had appealed to the Supreme Council, desiring to undertake an inquiry into the conditions of labor in Russia; and that the Supreme Council had decided to extend the inquiry, and to undertake a general survey, "not of the Russian internal political situation, still less of the recent political history of Russia, but of the precise position in Russia at that moment in regard to matters profoundly interesting to other nations, and intimately connected with the peace of the world."[6] This inquiry had been entrusted to the League. The League Council, therefore, was arranging for a general inquiry, including labor, under the auspices of the League; but as labor was so important a subject, as to be worthy of particular study, the Council was also arranging for a particular inquiry confined to labor, under the auspices of the International Labour Office. There were to be, therefore, two Commissions—one dispatched by the League and one by the International Labour Office, and upon the Commission appointed by the League there were to be two members, nominated by the International Labour Office, to act as connecting link.

A resolution, embodying this plan, was adopted[7] and a telegram was sent on March 17th, 1920, to the Russian Soviet authorities, requesting the necessary facilities. On March 22nd, a reply arrived from the People's Commissar for Foreign Affairs to the effect that the Assistant Chairman of the Central Executive Committee had forwarded the request to the President of the Central Executive Committee, who was then absent.[8] On May 1st, 1920, a few days after the first Polish offensive had been started, the Council—not having received

[5] During the negotiations for the Treaty of Riga, Poland made a third aggression, on Lithuanian territory, occupying Vilna. (Chapter XI.)

[6] *Official Journal,* March, 1920; p. 62. [7] *Ibid.;* p. 65.

[8] *Ibid.,* April-May; p. 99.

further word from the Central Executive Committee—sent a telegram asking for a definite reply.

The reply came from the Central Executive Committee on May 13th, in a long telegram. It stated that Russia welcomed any sign that other governments were renouncing their policy of strife against the Russian people; and took for such a sign the decision of the League of Nations to make an inquiry; but inasmuch as Poland had imposed war on Russia without first entering into negotiations, and this act by the Polish Government had not met any opposition from the League of Nations, but was even receiving active support from certain Powers which were members of the League, the Russian Government requested that the Commission of Inquiry appointed by the Council should contain no members which were representative of nations which had in fact renounced their neutrality toward Soviet Russia.[9]

It will be observed that the Soviet Government practically drew the attention of the Council to an existing state of war. Such being the case, it would not have been an unfriendly act toward Russia for a member state of the League to have taken action under paragraph 2 of Article 11. No such step was taken, however, and in reply to this telegram the Council expressed its regret that the Soviet Government had put forward conditions practically amounting to a refusal; explained that the League of Nations was a single international organ and that its delegates represented no particular state; hoped that the Soviet Government would modify its reply; and finally put the responsibility of frustrating a step to improve international relations upon the Soviet Government.[10]

But the Soviet Government did not modify its reply. On the contrary, in a telegram dated May 25th, 1920, Tchitcherin, the Commissar for Foreign Affairs, asserted that the military situation created by the Polish offensive, "and the elementary demands of the Republic," made it impossible for the Soviet Government to reconsider their terms.[11] Neither did the Council modify its attitude toward the "military situation" created by Poland, but consistently ignored the war.[12]

The action of the Council may be summed up as follows: It claimed that the League was an international organ for the establishment of justice and peace; on this basis it requested that Russia give uncondi-

[9] *Official Journal,* June, 1920; p. 149. [10] *Ibid.;* p. 151.
[11] *Ibid.,* July; p. 219.
[12] In September, 1920, while the second Polish offensive on Russia was still in progress, the Council considered, on request of Poland, the "threat of war" existing between Poland and Lithuania. (Chapter XI.)

tional authorization for representatives of a state at that moment at war with Russia, to enter the country. Since the Council expected this evidence of good faith from Russia, it was only natural that Russia should first desire to see the justification of the claim that the League was an organization for the establishment of peace. The League did not prove its claim by reprimanding its aggressive member state, but the Council placed the responsibility for frustrating international relations upon Russia.

THE ASSEMBLY

The report of the Secretary-General to the First Assembly recorded the initiation and abandonment of the elaborate project for an inquiry into Russian affairs.

This report was discussed by the First Assembly, and at the tenth meeting (November 23rd, 1920), Mr. Barnes (Great Britain) offered the following motion: [13]

"That the Assembly requests the Council to furnish them with full information as to the reasons which induced them to refrain from interfering to prevent hostilities between Poland and Soviet Russia last spring, and recommends to their earnest attention the possibility of a renewal of hostilities between those countries in the coming year."

Mr. Barnes quoted Article 11, by which the Council was, in his opinion, under obligation to intervene. He stated that opportunities had presented themselves; for early in February of 1920 the Soviet Government had made a declaration that it had no wish to make war on Poland, and as a result of this declaration, negotiations had been opened between the Polish Republic and Russia; that the Council had met on February 13th, while these negotiations were in progress, but had taken no notice of them; and that the communication received by the Council from the Soviet Government in May, 1920, stating that the Poles had seized Russian territory, would have afforded a still better opportunity for intervention by the League. In closing his argument in behalf of his motion, Mr. Barnes said: [14]

. . . . . "At that time it would seem to have been to the interest of the Soviet Government to have accepted intervention, because the Poles were about to launch an attack upon Kiev. Yet, again, so far as I know, nothing was done by the Council to avail itself of that opportunity, and the opportunity was lost. I think this Assembly, and the world, is entitled to know the reason why the opportunity was lost.

"A month or two later the door seemed to be reopened. The Supreme

[13] *Records of the First Assembly;* p. 210. [14] *Ibid.;* p. 265.

War Council on that occasion intervened when Warsaw was in danger, and Warsaw was saved. It may be said that the Council of the League had no concern in that. I beg to differ. I think the Council might have done something to have created an atmosphere of impartiality. The average man in the street does not distinguish clearly between one Council and another. He only knows that when Poland was carrying fire and sword outside of what appeared to be her legitimate borders, nothing was done, and when Warsaw was in danger, when the Soviet armies were at the gates of Warsaw, the Soviet hand was paralyzed and Warsaw was saved. These, I think, are circumstances which call for explanation." * * *

The explanation was given by M. Bourgeois (France). In his answer to Mr. Barnes' speech, he stated that he was not speaking on behalf of the Council, but merely as a member of the Council who took part in all the discussions and was acquainted with the facts. Quoting Article 11, he pointed out that neither Poland nor the Government of the Soviets had approached the Council requesting its intervention, and no state had asked that Article 11 be applied. The reasons for this had been the following: [15]

". . . It was because the whole world understood that it would not be possible to ask the League of Nations to intervene if it were evident that such intervention would not only be ineffective but possibly dangerous. It was dangerous, because the intervention of the Council of the League of Nations would necessarily have involved the intervention of those Powers who were able to place at the disposal of the League the forces necessary to render its intervention real and effective. There was thus a risk that the conflict might be extended instead of limited." [16]

Referring to the exchange of telegrams between Soviet Russia and the League, he reminded the Assembly of the attitude of the League, and of the fact that even moral intercourse had been rejected by the Soviet Government; also, he stated that moral action of the League being rejected, no other action was possible; and that since the Soviet Government had practically no economic relations with other states, economic measures were of no use. There remained only military intervention, concerning which he said: [17]

* * "The League of Nations has no other means at its disposal from a military point of view than those which it employed a few days ago in applying to the Great Powers for a small intervention, not military in any belligerent sense, but military in a peaceful sense, to permit the boundaries of the territory to be fixed in which the Lithuanian-Polish plebiscite is to be

[15] *Records of the First Assembly,* p. 267.

[16] According to this statement of M. Bourgeois, it would seem that the intervention of the Powers in assisting Poland was not dangerous, but the intervention of these same Powers to assist the League might have involved danger.

[17] *Records of the First Assembly;* pp. 269-270.

carried out. We are reduced—let us not be alarmed at this—to apply to the Powers and ask them for military contingents, if they will kindly send them voluntarily at the request of the League of Nations, so that its intervention may be more effective.

"Could we ask the Great Powers for military intervention in the dispute between Poland and the Soviets? If the Great Powers had thought fit to employ military force, they would not have had need of the Council of the League to decide to do so; none of them did so decide." [18]

M. Bourgeois concluded his statement by assuring the Assembly that the Council would know how to do its duty as conscientiously and as energetically as it had done hitherto.

M. Paderewski, in the name of Poland, informed the Assembly of the negotiations at Riga, which, he said, might lay at rest Mr. Barnes' anxiety that war would be resumed between Poland and Russia.[19]

Dr. Nansen (Norway) expressed the views of an impartial observer, as follows: [20]

. . . "It was in April that the Soviet Government applied to some very prominent and important Powers, Members of the League, for intervention. These Powers failed to intervene, and, as I understand it, the answer which the League received in May, the refusal to admit a Commission, was partly based upon the failure of the League to intervene. I only want to point out this fact because I cannot help thinking that if the Council had taken some steps at that moment it would have greatly helped the Polish situation and the Poles themselves. I am convinced that Poland, as a Member of this League, would certainly not have refused to comply with the request of the Council. I see perfectly well, as I am sure we all do, the enormous difficulties connected with any kind of intervention; but I cannot help thinking that if matters had been discussed just at that moment Europe would be different at this time."

It will be observed that a motion was suggested in the Assembly to request full information from the Council concerning the reasons for its attitude toward the Polish-Russian war. An unofficial reply

[18] M. Bourgeois here laid down the principle that if the Great Powers see fit to employ military force they can do so, and have no need for the Council of the League.

[19] "Once peace has been signed, the Polish Government will honour its signature. * * * Poland does not desire war. She has lost too much blood, she has suffered and endured too much; all her people, ardent though they are in defending their country, are humble, patient and industrious. At this moment they only desire peace."

This was said at a meeting held on December 4th, 1920, not quite two months after Poland had broken the agreement of Suwalki and General Zeligowski had occupied Vilna. (See Chapter XI.)

[20] *Records of the First Assembly;* pp. 274-275.

was given by a member of the Council, a national of a country that had assisted Poland in its aggression of Russia, speaking not in the name of the Council, but merely for himself. This reply stated the reasons why, in his opinion, economic and military intervention against Russia was impossible, but nowhere does it answer the questions raised by Mr. Barnes and Dr. Nansen, why no action was taken to restrain Poland, a member of the League, from aggression. The forty-two nations represented at the First Assembly accepted this answer as satisfactory, the motion requesting information was not passed, and the matter was dropped.

COMMENTARY

The action taken by the League towards this war was wholly negative; but the attitude taken toward the Covenant was positive in the following respects:

(1) The Council ignored Article 10, since the territory of a member state, Poland, was aggressed and the Council did not use its authority under this Article to advise upon means to preserve the integrity of that territory.

(2) The states members of the League ignored Article 11, since any threat of war is thereby declared to be matter of concern to the League, and yet no state requested a meeting of the Council to be summoned or brought to the attention of the League that such war existed.

(3) Poland violated Articles 12 and 13, since it resorted to war without first resorting to arbitration or diplomatic negotiations.

(4) The economic penalties of Article 16 were not applied by the states, nor were the military penalties applied by the Council, although the Great Powers members of the Council acted independently in assisting Poland, a Covenant-breaking state, then engaged in aggressive warfare.

(5) M. Bourgeois rejected paragraph 2 of Article 16, when he said that the Great Powers, had they deemed fit to resort to military force, had no need of the Council to decide to do so.

(6) Article 17 was neglected, and, in spite of the openings offered by Russia, that country was not invited to accept the obligations of membership.

CHAPTER XXII

THE GRECO-TURKISH WAR

The Greece of ancient times extended over the southern part of the Balkan peninsula, the Aegean Islands and the south and west coasts of Asia Minor. These territories were conquered by Rome, merged into the Byzantine Empire, and in the fifteenth century succumbed to the invasion of the Ottoman Turks, who in the process of their conquest of peoples of the Mohammedan religion had adopted that faith themselves. The power of the Turks rose to its height after their conquest of Constantinople (1453) and received its first check in the late seventeenth century in their unsuccessful siege of Vienna. Since that time they have slowly receded and peoples held by them have been successively liberated. Thus a Kingdom of Greece was re-established in the early nineteenth century on the southern extremity of the Balkans; whence, after the Balkan war of 1912, it spread north to the center of the peninsula. In 1914, Greece covered an area of about 42,000 square miles, with a population of 4,700,000. In the Great War the country at first declared its neutrality, but in 1917, following the policy of Venizelos (which was to unite all Greeks under Greek rule) it joined the Allied Powers.

The Ottoman Empire, reduced in territory and shaken by interior disorder, comprised at the outbreak of the war in 1914, Eastern Thrace and Constantinople, the peninsula of Asia Minor (Anatolia), Mesopotamia, Palestine, Syria, and Western Arabia; altogether a territory of 1,700,000 square miles with a population of about 21,000,000. Hardly more than one third of this population was Turkish, the rest being mainly Arab, Greek and Armenian. The Christian element of the population was concentrated in European Turkey and Asia Minor.

The subject of this chapter is the war between Greece and Turkey from its direct cause, the occupation of Smyrna by Greece, to its direct result, the tearing up of the Treaty of Sèvres. It is not proposed to discuss in detail the Near East situation with its diversity of complex questions, capitulations, Turkish debts, the freedom of the Straits, Mosul oil, Christian minorities, homeless Armenians or exchange of populations; these subjects are touched upon only in so far as they have directly concerned the action of the Allied Powers or of the League of Nations in the settlement of a controversy.

DISMEMBERMENT OF TURKEY AND THE NATIONALIST MOVEMENT

During the war, France, Great Britain, Russia and Italy had made several agreements concerning the division of the Turkish Empire and the regime over the Straits, in case of an Allied victory. Several of these agreements were in conflict, in that they disposed of the same territory in a different manner. By an agreement of January, 1915, with Hussein, Sheriff of Mecca, Great Britain undertook to form an independent Arab State; by the Treaty of London, April, 1915, Italy was promised Adalia, on the southern coast of Asia Minor, and the Italian occupation of the Dodecanese Islands off the southwest coast was confirmed; in May, 1916, the Sykes-Picot Treaty between France and Great Britain gave Syria, Cilicia and Mosul to France and Mesopotamia and Palestine to Great Britain; in 1917 the Agreement of St. Jean de Maurienne gave Smyrna to Italy.[1]

On October 30th, 1918, the Armistice of Mudros was signed between the Allied Powers and Turkey. The Allies occupied the European and Asiatic sides of the Straits together with Constantinople, the Arab territories being already under their control. British troops advanced into and occupied Cilicia which they subsequently ceded to the French to complete the Syrian mandate on the north. The St. Jean de Maurienne Agreement needed the signature of Russia to come into effect and since this was not forthcoming, the agreement was considered abrogated and Italy did not at once attempt to occupy Smyrna.

In February, 1919, however, M. Venizelos appeared before the Council of Ten in Paris during their deliberations upon the Peace Treaties and claimed for Greece, in recognition of its services in the last year of the war, Smyrna and a surrounding area. His claim was supported by Great Britain and France, but was strongly opposed by Italy, which country, it appears, landed troops at Adalia early in April, 1919, with the intention of enforcing the St. Jean de Maurienne Agreement. However, when the Italian Delegation to the Peace Conference left Paris, owing to the dispute over Fiume in April, 1919,[2] the remaining Allied Powers authorized Venizelos to occupy Smyrna. The decision was carried out on May 15th, when Greek troops were landed at Smyrna with the support of Allied warships. The immediate effects of this landing were massacres by both Greeks and Turks, continuing, it seems, for several weeks.

[1] Smyrna, on the western coast of Asia Minor, is an ancient commercial city and a center of trade between Anatolia and Europe. The population was mixed Greek and Turkish, each country claiming a majority of its own nationals.

[2] Chap. X; p. 238.

The Nationalist movement in Turkey was the direct outcome of this aggression of Turkish territory. In the summer of 1919, in northern Anatolia, Mustafa Kemal Pasha, then an officer in the Turkish army, began the organization of a Nationalist Party which had as its aim the creation of a government strong enough to free Turkey from foreign danger and to extend Turkish power again over territories recognized as Turkish by right. The territorial and other claims of the Nationalists were set forth in the "National Pact," drawn up by Nationalist deputies at Constantinople in January, 1920. Articles 1, 2 and 3 demanded that the Arab territories of the Ottoman Empire determine their future by plebiscite and that the same should take place in the Armenian provinces and also in Western Thrace. Under Article 4 the Bosphorus was to be opened to the commerce of the world under condition that the security of Constantinople was assured. Under Article 5 the Minority Treaties, as drawn up by the Allied Powers, were to be adhered to on the basis of reciprocity for Moslem minorities in other countries. Article 6 provided:[3]

"It is a fundamental condition of our life and continued existence that we, like every country, should enjoy complete independence and liberty in the matter of assuring the means of our development, in order that our national and economic progress should be rendered possible, and that it should also be possible to conduct affairs in the form of a more modernized and regular administration. For this reason we are opposed to restrictions inimical to our development in political, financial, and other matters. The conditions of the settlement of our proved debts shall likewise not be contrary to these principles."

A provisional government was set up in April, 1920, by the Nationalists at Angora, but was recognized neither at Constantinople by the Sultan's Government, nor by the Allied Powers. Early in 1920, however, even before establishing their government, the Nationalists had begun to develop military resistance in Eastern Thrace and in Cilicia.

In April, 1920, at the Conference of San Remo, the Allied Powers recognized the right of Greece to a mandate in Smyrna and Eastern Thrace and prepared to confirm such claims in the Treaty of Sèvres then being drafted. The Nationalists, preparing to resist such provisions, attacked the British troops stationed on the Asiatic shore of the Straits. Early in July, Greece came to the rescue and by a successful offensive against the Nationalists, occupied with Allied consent, territory northeast of Smyrna as far as Brusa and took possession of Eastern Thrace before the Sèvres Treaty was signed.

[3] For full text of National Pact, see *A History of the Peace Conference of Paris*, Vol. VI; pp. 605-6.

While the negotiations for the Treaty of Sèvres were in progress and during the Greek offensive launched on Brusa and Eastern Thrace, the Council of the League of Nations was considering a request from the Conference of Ambassadors to guarantee the protection of minorities in Turkey. On April 11th, 1920, it approved a report containing the following paragraph:[4]

"The Council has unanimously decided that its mission and the expectations of the civilized world require it to accede to this request. It considers that it would be carrying out the great task for which it was constituted by contributing in every possible way to prevent the repetition of the abominable crimes which have so often been committed in the territory of the Ottoman Empire, and thus prevent the recurrence of war, which these massacres may bring about."

Although war was imminent, by reason of the Greek expansion in Asia Minor and Eastern Thrace and of the activities of the Nationalists, the Council did not take note of the situation; neither did it present an effective plea that the Peace Treaty of Sèvres—the first Peace Treaty to be drawn up since the League had been created—should be a genuine Treaty of Peace and not one of reprisal engendering bitterness and hatred.

EFFECT OF THE TREATY OF SÈVRES

Representatives of the Sultan's Government signed the Treaty, dictated to them by the Allied Powers, on August 10th, 1920, at Sèvres. The territory placed under Turkish sovereignty by this Treaty comprised Constantinople and a part of Asia Minor; but the restrictions placed upon Turkish sovereignty within this territory were as follows: (1) Constantinople together with both shores of the Straits was to be controlled by a Straits' Commission composed of representatives of the Allied Powers (with two votes each), Greece and Roumania (with one vote each) and Russia, Turkey and Bulgaria (if, and when, these countries became members of the League of Nations.[5] (2) Smyrna and a surrounding territory were to be detached from Turkey, and, although remaining under Turkish sovereignty, exercise of such sovereignty was to be transferred to the Greek Government which would be responsible for the administration of the territory and maintenance of military forces. A local parliament was to be created with an electoral system approved by the Council of the League of Nations. Five

4 *Official Journal*, April-May, 1920; p. 82.

5 For further provisions concerning the Straits Commission and placing of responsibilities upon the League, see Chap. III; p. 68.

years after the coming into force of the Treaty, this local parliament could, by majority vote, request the Council of the League for definite incorporation of Smyrna and the surrounding territory in the Kingdom of Greece. In such event, Turkey agreed to renounce all rights and title over the territory and Smyrna.[6] Compulsory military service was not to be enforced, pending the final determination of the status of Smyrna and the provisions of the Greek Minority Treaty were to be applicable. Smyrna was declared to be a port of international concern and the League of Nations was authorized to determine the area for a lease to be granted to Turkey in that port. (3) An Allied Commission sitting at Constantinople was to draw up a scheme for local autonomy for Kurdistan (lying south of Armenia and north of Syria and Mesopotamia).[7] The Kurds were promised independence, if, a year from coming into force of the Treaty, the population should so demand, and the Council of the League so recommend. (4) Turkey agreed to an undefined boundary with Armenia, the delimitation of which was to be arbitrated by the President of the United States. (5) In addition to these provisions, an agreement between France, Great Britain and Italy was attached to the Treaty (the so-called Tripartite Agreement), marking out zones of "special interest" for these respective countries.

The territorial provisions of the Treaty would have landlocked Turkey but for access to the Black Sea. The zones of the Straits in Europe and in Asia were to be under Allied occupation, the western coast of Asia Minor (territory of Smyrna) was to be held by the Greeks; the southwestern and southern coast was to be acknowledged as "an area in which the special interests of Italy are recognized" and the islands off the coast were to be divided between Italy and Greece. The Italian zone joined a French zone, which extended from the Gulf of Alexandretta in the Mediterranean Sea northeastward into Cilicia and joined the proposed boundaries of Armenia. Further infringements on Turkish sovereignty were: Allied control of the Turkish army which was to be reduced to 50,000 men; and control of the finances of the country which were to be entrusted to a Financial Commission, consisting of representatives of the Allied Powers, "with whom there shall be associated a Turkish Commission in a consulta-

[6] It will be noted that no provision was made whereby the local parliament might ask for reunion with Turkey and no limit of time was set to the Greek occupation.

[7] For the safety of the mandated territories, and particularly for the oil of Mosul (Southern Kurdistan), the Allies were apparently ready to infringe not only on the sovereignty of the Turks in drawing up this scheme for local autonomy within Turkish territory, but also upon the sovereignty of the Kurds.

tive capacity"; control of the protection of minorities by the League; and re-establishment of capitulations, abolished by Turkey in 1914, with the modification that an Allied Commission was to prepare a scheme of judicial reform for acceptance by the Turkish Government.[8]

The moral repudiation of the Treaty of Sèvres by the Nationalist Turks had in fact taken place before this Treaty was signed by the representatives of the Sultan's Government, but its drastic provisions greatly strengthened the Nationalist resistance. The Treaty was declared null and void by the Angora Government, which, with redoubled activity, continued organizing the Turkish army. The eviction of enemy forces from Asia Minor seemed to be the first objective and the Nationalists attacked first where resistance seemed weakest and where their mutual interest with Russia assured to them the cooperation of that country.[9] By the end of December, 1920, Russian troops and the Nationalist Turks had conquered Armenia, and two districts of the Republic of Erivan were the territorial gain of the Nationalists.[10]

The effects of the Treaty of Sèvres in Greece were not so advantageous. It is difficult to understand why, after having gained such great advantages for his country, M. Venizelos should have lost his power;[11] but such was the case. At the elections held in November, 1920, the Venizelists were defeated by the Royalist Party, and—since young King Alexander had suddenly died a few weeks before the elections—King Constantine, exiled in 1917 because of his friendliness toward the Central Powers, was invited to return. The British, French and Italian Governments protested against this change of sovereignty, but the Greek answer was a plebiscite held on December 5th, which gave an overwhelming majority of votes in favor of the King. By this act, Greece lost the sympathy and backing of France. One of the first evidences of this change appeared when the Assembly of the League of Nations on December 15th, 1920, in electing the four non-permanent members of the Council replaced Greece with China, the former receiving but one vote.[12]

[8] For complete text of the Treaty of Sèvres, see *Treaty Series*, No. 11, H. M. Stationery Office, London, 1920.

[9] The mutual interests with Russia subsequently led to the Russo-Turkish Treaty signed March 16th, 1921, and ratified by the National Assembly, July, 1921.

[10] Chap. XIX.

[11] The most plausible explanation—resentment of the Greeks toward foreign assistance and influence—will be found in Toynbee: *The Western Question in Greece and Turkey;* pp. 61-82.

[12] Greece had been named non-permanent member provisionally in January, 1920; see Chap. II; p. 39.

It will be observed that at this time the Greeks were holding Turkish territory not assigned to them by the Treaty of Sèvres, that they had occupied this territory with Allied consent and assistance; that the territory was not a geographical nor economic unit and its boundaries were not strategically advantageous; that to hold the territory meant further war; and that the Greeks hitherto constantly encouraged to liberate their Christian brothers in Asia Minor considered themselves under moral obligation to continue this process of liberation.

WAR AND NEGOTIATIONS

At the time of the return of King Constantine, two facts became evident: (1) It was to the interest of Great Britain to keep Greek troops between the British troops on the Straits and the Turkish Nationalists, therefore Great Britain would continue to encourage Greece; (2) if France helped Greece, the French would be exposed to continuous attacks in Cilicia, therefore it was of interest to France not to assist Greece any further, but on the contrary to make friends with Turkey. Henceforth, Greece would be opposed not only by the Nationalist army, but also by the hostility of France. Nevertheless, in January, 1921, King Constantine proclaimed in Parliament that he would continue the war in Asia Minor.

A successful offensive was launched in January and the Greeks occupied part of the railway line connecting Angora with the Bosphorus. Before further operations could take place, the Allied Powers called a conference in London, in February, 1921, and offered to mediate.[13] The terms of the Treaty of Sèvres were modified in favor of Turkey and among other suggestions it was proposed that Smyrna and the Aegean Islands be placed under a Christian governor to be appointed by the League of Nations. Owing to disagreement between the Allied Powers, the modifications suggested were a compromise, not substantial enough to satisfy the Turks, but too substantial to be approved by the Greeks, particularly after a victory. The territorial concessions were to be made chiefly by Greece (and Armenia) while the Allies themselves sacrificed practically nothing. Accordingly, no agreement was reached and the Greeks resumed their offensive in March. In April, the Greek army received its first check, but preparations were immediately made for a new attack, the aim being Angora. In June, Great Britain made a further offer of mediation but the Greeks were unwilling to give up the planned offensive, and, attacking in July, marched

[13] To this Conference representatives of both the Sultan's Government in Constantinople and the Nationalist Government in Angora were invited.

victoriously toward Angora. They were stopped by the Turks in September, however, and forced to retreat and entrench in position for the winter.

The Allied Powers had declared their neutrality in March, 1921; but at the same time the Turks, aided by Russia, forced the French out of Cilicia. France thereupon undertook separate and secret negotiations with the Nationalist Government, and sent M. Franklin Bouillon to Angora for this purpose. An agreement was reached and signed on October 20th, 1921. By this agreement, France relinquished Cilicia and a strip of Northern Syria, thus giving Turkey access to the Mediterranean Sea at the Gulf of Alexandretta. Turkey also recovered a section of the Bagdad Railway, but recognized French interests in it. France thus definitely recognized the Nationalist government;[14] and separated the French cause from that of the British and the Greek.

After the Greek retreat in September, 1921, hostilities were not resumed for several months. In February, 1922, the Allied Powers renewed their attempts to reach an agreement. At a Conference called at Paris, Turkey was offered permission to keep 85,000 men under arms instead of the 50,000 permitted by the Treaty of Sèvres; the Asiatic side of the Straits was to be returned to Turkish sovereignty, while the European side was to remain under Allied occupation; Eastern Thrace was to be partitioned; and Smyrna was to be returned to Turkey. But the Nationalists demanded immediate evacuation of Asia Minor by the Greeks, who, apparently encouraged by Great Britain, refused and the negotiations failed. Following this failure, Italy concluded a separate agreement with the Angora Government in April, 1922.

In July, 1922, Greece, in preparing for a last offensive, conceived a desperate plan and transferred 40,000 men from Asia Minor to Thrace, with the intention of occupying Constantinople. The Allied Powers, whose authorization was requested for this act, refused permission. While the Anatolian front was thus weakened the Turks attacked and put the Greek troops to flight. Once broken, the Greek resistance completely gave way. The army, worn out and demoralized by years of hopeless fighting, had but one aim—to reach the sea and boats and safety from the pursuing Turk. When this aim was realized the troops broke into revolt, demanded and forced the abdication of King Constantine on September 27th, and invited Venizelos to return. Meanwhile, on September 9th, the victorious Nationalists entered

[14] On November 1st, 1921, the Nationalist Government declared itself to be the Constitutional Government of Turkey.

Smyrna, and having evicted the Greeks, turned against the Allied forces on the Straits.

The French and Italian troops had been withdrawn from the Asiatic side of the Straits, the British troops alone did not seem strong enough to withstand a concentrated attack by the Turkish army, and negotiations for an armistice had to be undertaken. The armistice was signed on October 11th, 1922, at Mudania, on condition that Eastern Thrace was to be evacuated at once and returned to Turkey, but the Turks were to retire from the zone of the Straits. A conference was called to meet at Lausanne, in November, to discuss the terms of the new treaty to be concluded with the Angora Government.

It will be noted that war was waged between Greece and Turkey for over eighteen months with the full consent and assistance of France and Great Britain; that conferences called for purposes of mediation necessarily failed because France and Italy had concluded a separate peace, thus breaking the united ranks of the Allied Powers; that both Greece and Turkey desired to profit by the differences between the Great Powers; and that the Great Powers did not hesitate to sacrifice Greece and the Christian population of Asia Minor when their own interests were endangered.

ATTITUDE OF THE LEAGUE OF NATIONS

It appears from this brief record that the settlement of this controversy always contemplated a resort to force. The question arises as to why no member of the League appealed to the Council under paragraph 2 of Article 11? It will be remembered that in April, 1920, the Council had approved of a report concerning the protection of minorities in Turkey. This report was not followed up, but the First Assembly brought forward another aspect of the question, when it passed a resolution, on December 15th, 1920, to the effect that:[15]

"The Council be invited to constitute a Commission of Enquiry with a view to informing the Council as to the present situation in Armenia, in Asia Minor, in Turkey and in the territories adjoining these countries, regarding deported women and children."

On February 22nd, 1921, Marquis Imperiali (Italy) submitted a report to the Council on this resolution of the Assembly, stating that a Commission of Inquiry had little chance to reach any results, and giving the following reason: [16]

[15] *Records of the First Assembly:* p. 551.
[16] *Official Journal,* March-April, 1921; p. 118.

"The fact is that there are at present in Turkey and the adjacent countries —if we except the territory occupied by the Allied troops—nothing but areas ruled over by Governments which are not recognised, and to whom no diplomatic representatives have been accredited. They are even in a state of war with certain members of the League of Nations. It is still very uncertain whether it is possible to visit these regions. Such is the situation in the central part of Asia Minor and in Armenia."

The Council then appointed a Commission of Three, consisting of Miss Cushman, Dr. Kennedy and Miss Jeppe, who were occupied at the time in Relief Work in Asia Minor, to study the question of the deportation of women and children.

During the Second Assembly comments were made upon the war, characteristic of which are the following:

M. Lafontaine (Belgium) on September 9th, 1921:[17]

"The Greeks and Turks are slaughtering each other whilst a world armed to the teeth lacks the courage to intervene."

Emir Zoka-Ed-Dowleh (Persia):[18]

"Public opinion is astonished that, despite the existence of the League of Nations, its Council has done next to nothing to stop a war which might well become universal. It seems difficult to understand why the democratic Government of Greece, itself a Member of the League of Nations, and the Turkish people, who seem ready to submit to a just arbitration, continue hostilities, and why the Council of the League of Nations and the various Powers tolerate such a sad state of affairs."

To which statement the Greek representative replied on September 15th, 1921:[19]

"M. Viviani * * * proclaimed here the impotence of the League of Nations, which possessed neither army nor fleet to fight a rebel who had revolted against his own government. * * * Greece alone has undertaken this task; * * * she does not deserve blame for this work of liberation and pacification."

When the Third Assembly met, the humanitarian questions occupying the Council gave rise to criticisms concerning the war in the Near East. Dr. Nansen, High Commissioner for Refugees, in a note read to the Assembly on September 18th, 1922, said:[20]

"I would ask the Assembly whether the League ought not now, according to Article 11 of the Covenant, to take any action that may be deemed wise and effectual to safeguard the peace in the conflict which has caused the grave situation mentioned."

[17] *Records of the Second Assembly;* p. 167.
[18] *Ibid.*, p. 179.
[19] *Ibid.*, p. 278.
[20] *Records of the Third Assembly,* Vol. I, p. 124.

He proposed a resolution requesting the Council to consider what steps could be taken to put an end to hostilities between Greeks and Turks. The request was placed on the agenda of the Sixth Committee. A letter from the Persian delegate, dated September 18th, 1922, also drew attention to the situation, as follows:[21]

> We have the honour to inform you that we have received a letter from the delegation in Rome of the Great National Assembly of Turkey requesting the intervention of Persia with the League of Nations, as the only State of the Mohammedan World represented on the Assembly, for the purpose of organizing an impartial enquiry into the atrocities committed during the present war in the Near East. We beg to call attention to two essential points in this letter:
>
> "1. The Turkish National Assembly desires an impartial judgment from the League of Nations.
>
> "2. Turkey requests protection for the Mohammedan minorities in Thrace. * * * *
>
> "We have considered it right to call your attention to the request of the delegation of the Great National Assembly of Turkey, because that country is not yet a member of the League."

The note ended with a proposal that the Assembly pass a resolution requesting the Council to send a neutral Commission of Enquiry to Thrace and Asia Minor. The Greek delegate in a note dated September 20th, objected to the terms of the Persian letter and said:[22]

> "The Greek delegation ventures to point out that this is a case of irregular procedure, *i. e.*, that a State member of the League should lay before the Assembly a request from the Secretariat of a body representing a Government which is not recognized as a State by the Members of the League of Nations."[23]

Both notes were referred to the Sixth Committee, together with that of Dr. Nansen. On September 22nd the Persian delegation withdrew its request for an enquiry since it had learned that the International Red Cross Committee was taking active measures for the same purpose.[24]

Dr. Nansen's proposed resolution was discussed in the Sixth Committee. He based his proposal on Articles 3 and 11 of the Covenant, and stated that it was imperative that the Council should get into communication with the Powers concerned in the Near East question and that the parties should be invited to a Conference to be held under

[21] *Records of the Second Assembly*, p. 129.

[22] *Records of the Third Assembly*, Vol. I, p. 167.

[23] It will be observed that this note was written in September, 1922, after the Franco-Turkish and Italo-Turkish agreements had recognized the Nationalist Government.

[24] *Records of the Third Assembly*, Vol. I, p. 208.

the auspices of the League.[25] He was supported by representatives of Australia, Persia and China, but Mr. Fisher (Great Britain) pointed out that negotiations were already in progress between certain powers concerned and warned that the League must avoid complicating these negotiations while indicating its willingness to render assistance. He proposed a draft resolution in which these principles were embodied. He was supported by M. Hanotaux (France) and Marquis Imperiali (Italy). Accordingly, Dr. Nansen's proposal was transformed and on September 25th, 1922, the Sixth Committee passed the following resolution unanimously:[26]

"The Assembly, earnestly desirous of securing the restoration of peace in the Near East and of supporting all efforts which are made for that purpose, notes with satisfaction the proposals for the summoning of a special conference to deal with the situation, and trusts that the Council, without interfering with any negotiations now pending, will take such steps as it may deem desirable and justifiable by the state of the negotiations with a view to giving effect to the unanimous desire of the Assembly for the prompt re-establishment of peace."

On September 27th, the Sixth Committee reported to the Plenary Assembly and the resolution was unanimously adopted. The record of the League shows that while it studied the question of deported women and children and took part in the general relief work for refugees, it did nothing to prevent war when Greece, a member state, resumed aggressive warfare in January, 1921; neither did it make any effort to restrain France and Great Britain and admonish those two countries to strict neutrality; neither did it, in the interest of the Christian population of Asia Minor, arouse public opinion in the one direction that could have proved useful, namely, not against the Turk, who was not to be impressed by European public opinion, but against the authors of the Treaty of Sèvres.

THE LAUSANNE CONFERENCE

On November 1st, 1922, the Angora National Assembly declared that all acts passed by the existing government at Constantinople since March 16th, 1920, were to be null and void; that the Sultanate was to be abolished and that the National Assembly was to be sovereign over the Republic of Turkey. Thus the Sultanate, which had in fact ceased when the National Assembly came into existence, also ceased in name, and the Turkish delegates to the Lausanne Conference (opened on November 20th, 1922) were sent by the National Assembly, and

[25] *Records of the Third Assembly,* Minutes of the Sixth Committee; p. 44.
[26] *Ibid.,* p. 49.

instructed not to accept any settlement other than one based upon the National Pact.

It proved possible to settle on this basis nearly all of the territorial questions. The provisions of the Treaty of Sèvres and of San Remo were to remain in effect for the Arab territories; Smyrna and Eastern Thrace were to be returned to Turkey; as were also the Islands of Imbros and Tenedoz, which were, however, to be demilitarized; Constantinople was to be evacuated by the Allied troops, but a demilitarized zone was to be set up around it; and a Straits Commission was to be constituted under the Chairmanship of the Turkish Member.

Two territorial questions remained unsettled. Eastern Thrace with its capital, Adrianople, had been ceded to Turkey at once after the Mudania armistice, but the Turks still claimed a small territory west of the River Maritza, namely Karagatch, the suburb and railway station of Adrianople. The Greeks objected on the ground that the River Maritza was the natural frontier. The second unsettled territorial question was of greater importance. It concerned the boundary between Turkey and Iraq (Mesopotamia). Great Britain, as mandatory of Iraq, claimed that the frontier should be drawn north of the district of Mosul, and Turkey claimed that it should be drawn south, both parties coveting the Mosul oil fields. It was provided that if direct negotiations between the parties failed, this question should be referred to the League of Nations.[27]

For the protection of minorities, provisions similar to the Minority Treaties were drawn up, and a supplementary agreement was reached for the exchange of Greek and Turkish populations.[28] This was signed on January 30th, 1923, and the Council of the League of Nations was to appoint three neutral commissioners to take the chairmanship alternately over a mixed commission which was to supervise property claims connected with the exchange.[29]

No agreement could be reached, however, on the subject of capitula-

[27] Chap. III; p. 69.

[28] Dr. Nansen, League High Commissioner for Refugees, undertook negotiations for such exchange of populations at once after the armistice of Mudania. It seems that the Angora Government "agreed in principle," but delayed the discussion of details, while the Greek and Armenian populations, terrified by Turkish reprisals, fled to Greece in overwhelming numbers. Dr. Nansen, in a report dated November 18th, 1922, put their number at 300,000 from Eastern Thrace and 600,000 from Asia Minor, and added that about 350,000 more Greeks and Armenians were awaiting transport to Greece in Black Sea ports or moving toward the coast. This reported movement is alleged to have been caused by a Turkish order for all Greeks to leave Anatolia within one month.—*Official Journal*, January, 1923; pp. 133-135.

[29] Chap. III; p. 69.

tions, indemnities and debts, and the Conference broke up on February 4th, 1923. On March 6th, the Angora National Assembly declared the Draft Treaty of Lausanne to be unacceptable.[30]

The breakdown of the Lausanne Conference led to renewed threats of war. Upon the departure of the Turkish delegation, Allied warships were dispatched to Smyrna; but on the protest of Kemal Pasha they were almost immediately withdrawn. There were rumors of a threatening French attitude against concentration of Turkish troops on the northern boundary of Syria; the Greek army, reorganized and full of patriotic enthusiasm, was reported to be ready to reconquer Eastern Thrace. Although, on April 22nd, 1923, the negotiations at Lausanne were resumed, threats of war in Thrace continued, and became acute toward the end of May, when the bridge over the Maritza River at Karagatch was blown up by Turks and a Greek fleet was sent to the Dardanelles.

Through efforts of the Allied Powers, however, a compromise was reached on the disputed questions as follows: Greece renounced Karagatch, and ceded a strip of territory west of the River Maritza; and Turkey, in turn, renounced its claims on reparations, and declared itself satisfied with the fact that Greece acknowledged responsibility for the damages in Asia Minor; the question of the Iraq frontier was set aside by the Conference to be settled by direct negotiations between the parties, or failing that, by the Council of the League of Nations; capitulations were abolished and nationals of foreign countries in Turkey were to claim no treatment more favorable than that accorded to Turkish nationals.[31] The treaty was finally signed on July 24th, 1923, and ratified by the Angora National Assembly on August 23rd, and by Greece on August 26th.

The Allied troops withdrew from Constantinople and Thrace in September, 1923, and the Turks were thus free to draw up their new constitution and develop their country.[32] They are not hampered by a

[30] For detailed account of terms of the First Lausanne Conference, see *History of the Peace Conference of Paris,* Vol. VI, pp. 106-117.

[31] For text of the Lausanne Treaty see *Treaty Series,* No. 16 (1923), H. M. Stationery Office, London.

[32] At a meeting of the Council of the League, on July 5, 1923, a representative of one of Turkey's former allies, Hungary, in discussing the protection of Hungarian minorities in Roumania, said: "I would remind you of Kemal Pasha, who had an army of 300,000 men. He was thus able to tear up the Treaty of Sèvres and he may be seen today sitting on terms of equality with the representatives of Europe at Lausanne. If we had 500,000 men, perhaps we should not be seated here at this table."—*(Official Journal,* August, 1923; p. 893.) See also Chap. XXXIII, p. 613.

dictated peace treaty, and are objects of envy to their former allies, the Central Powers.

THE LEAGUE OF NATIONS AND THE LAUSANNE TREATY

It has been stated that the Council was given the responsibility for appointing commissioners for the exchange of populations. This was effected on September 17th, 1923. It will also be recalled that the League was given the responsibility for protecting minorities in the Turkish Republic. Of Greek minorities there will be none outside of Constantinople, owing to the exchange of populations; but there remain certain other minorities—Armenians who have not found a home in the Russian Republic of Armenia, Georgians, Arabs and Kurds. The contemplated solution of the problem, offered for these minorities, is not less drastic than the exchange of populations, for the Angora Government has announced that its policy will be to draw forbidden zones for non-Turkish elements. Under this policy, Arabs may not reside on the frontiers of Syria and Iraq; Armenians will be separated from Russian Armenia; and Georgians from Georgia; by such forbidden zones. The underlying principle appears to be that the minority must move from territories adjacent to its original homeland where its people are in a majority. This will put an effective end to propaganda and *irredenta,* but it breaks up the homes of thousands of inhabitants. Under the guarantee of an enlightened League of Nations, it may be questioned whether such radical legislation does not establish a precedent which would be regrettable were others nations to adopt it as a model for dealing with minorities.

Another duty assumed by the League is the settlement of the Turkish-Iraq boundary. The territory concerned is Mosul, promised to France in the Sykes-Picot agreement, then retained by Great Britain at the San Remo Conference, as part of the British mandate of Iraq, and also claimed by Turkey in the National Pact. In January, 1923, while the first Lausanne Conference was in session, the British Secretary of State for Foreign Affairs appealed to the League of Nations under Article 11 of the Covenant, referring to the Turkish-Iraq boundary as "a matter affecting international relations which unfortunately threatens to disturb international peace and the good understanding between nations."[33] * * * * On January 30th, 1923, however, Lord Balfour at the meeting of the Council, declared that the British appeal had been made as a "hypothetical remedy for a danger that might not occur;"[34] and since the Turkish delegation had raised objections to

[33] *Official Journal,* March, 1923; p. 249.

[34] *Ibid.,* p. 201.

the reference of this question to the League, Great Britain would insist only if there arose an actual threat of war, that is, an attempt on the part of Turkey to invade Iraq.[35] The Lausanne Treaty, therefore, disposed of the frontier by leaving it to direct negotiations between the parties and providing that, if no agreement was reached within nine months, the dispute should be referred to the League of Nations. These negotiations were taken up in October, 1923, postponed and again re-opened on May 17th, 1924, at Constantinople. The attitude of the Turks was as irreconcilable as at Lausanne; for Mosul is within the territory claimed by the National Pact and they insisted that Mosul being Turkish must belong to Turkey.[36] The position of Great Britain is complicated by the fact that it is mandatory of Iraq and, as such, representative of Iraq interests; and the Anglo-Iraq Treaty, signed in October, 1922, and ratified by the Iraq Constituent Assembly on June 10th, 1924, establishing the British rights over this mandated territory, is in danger of not coming into force should Mosul be ceded to Turkey.[37] The Constantinople negotiations, therefore, ended in a deadlock. Should Turkey agree to the terms of the Treaty of Lausanne, and the Mosul question be referred to the League, the strange situation will arise that the League will be arbitrating a dispute in which—as protector of the mandated territory of Iraq—it is an interested party.

It will be observed that the part taken by the League in the negotiation of the Lausanne Treaty was not greater than its part in the previous efforts to stop the Greco-Turkish war. The Council did not meet to consider a renewal of war, when such a threat arose in May, 1923; neither did it take any steps with a view to giving effect to the unanimous desire of the Assembly "for the prompt re-establishment of peace.[38] The League has undertaken to protect minorities, under conditions where it has not the power to change a law which has for its object the restriction of liberty of these minorities; it has given its sanction to the greatest enforced exodus of populations since the early middle ages, without being able to secure the extensions of time necessary to prepare effective administrative measures; and it is

[35] For Turkish objections, see Chap. I; p. 26.

[36] That the Turks have regarded Mosul as belonging to Turkey was indicated in 1923, by the Chester Concessions.

[37] The Iraq Constituent Assembly ratified the Anglo-Iraq Treaty by 36 votes to 25, while 28 members were absent or refrained from voting. Those who voted for the Treaty then signed a petition to the President of the Assembly, which petition concludes as follows: "And this Treaty and its agreements shall be invalid if Great Britain does not protect the rights of Iraq in their entirety in the Mosul *vilayet.*" *(London Morning Post,* June 12, 1924.)

[38] See p. 406.

bound to accept arbitration in a dispute to which, under Article 22 of the Covenant, it is an interested party.

COMMENTARY

The manner of settling the dispute between the Allied Powers and Turkey is a series of paradoxes. Territory was bartered away before the barterers obtained its possession; a member of the League violated Articles 12, 13 and 15 of the Covenant; no member of the League performed the friendly act contemplated under Article 11, and Article 16 was ignored. The Council disregarded Article 17 constructed for such an emergency. Certain of the Allied Powers concluded a separate peace with Turkey which enabled that country to obtain a successful general peace with all of them. The moral justification for the war was that it was fought for the liberation of Christians in Asia Minor; these Christians have been either exterminated or have become homeless refugees. The humanitarian League of Nations, without the express consent of its members being obtained, was called upon to assist in an exchange of populations based upon principles at variance with its humanitarian efforts in other directions. The outstanding fact is that when a powerful member of the Council wills war or condones injustice, the League is powerless in opposition but may be useful in looking after the casualties attending the operation.

CHAPTER XXIII

THE OCCUPATION OF THE RUHR

The Ruhr district is situated on the right bank of the Rhine, in the valley of the River Ruhr. It covers an area of 2,600 square miles and has a population of about 5,000,000. The district is the largest industrial center of Germany, producing, in 1913, 115 million tons of coal, 9 million tons of cast iron, and 10 million tons of steel, that is, about 70% of the total coal output of the country and 50% of the total steel and cast iron output respectively. Of the important towns of the district Düsseldorf, Ruhrort, and Duisberg were occupied by the Allied Powers in 1921; of the territory occupied by France and Belgium in 1923, Essen was the most important industrial city.

The occupation of the Ruhr presents economic and social consequences with which the world is more or less familiar. Humanitarian and economic schemes have been devised to lessen these consequences and to ensure reparations. With these aspects this discussion is not primarily concerned. But the act of the occupation of the Ruhr in itself created a controversy between Great Britain and France as to the legality of that occupation. The question raised, involved the interpretation of the Treaty of Versailles and the continuance of that controversy, unsettled and undecided as to the merits of the contention, has served to embitter further the relationship of the two great Allied Powers, and to block an effective settlement of the economic and humanitarian questions—in fact of the peace—of Central Europe. It is with the controversy between France and Great Britain that the following discussion is concerned.

REPARATIONS AND SANCTIONS IN THE TREATY OF VERSAILLES

Article 233, Part VIII, of the Treaty of Versailles established a Reparation Commission to determine the amount of compensation to be paid by Germany for damage done to the civil population and property in the countries of the Allied and Associated Powers. Article 234 provided that "the Reparation Commission shall after May 1, 1921, from time to time, consider the resources and capacity of Germany" and may extend the time or modify the form of payment. Annex II to Part VIII of the Treaty established the membership, proceedings, powers and sanctions in case of default by Germany to pay. In this respect Articles 17 and 18 of the Annex provide:

"Article 17. In case of default by Germany in the performance of any obligation under this Part of the present Treaty, the Commission will forthwith give notice of such default to each of the interested Powers and may make such recommendations as to the action to be taken in consequence of such default as it may think necessary.

"Article 18. The measures which the Allied and Associated Powers shall have the right to take, in case of voluntary default by Germany, and which Germany agrees not to regard as acts of war, may include economic and financial prohibitions and reprisals and in general such other measures as the respective Governments may determine to be necessary in the circumstances."

Article 428, Part XIV, of the Versailles Treaty provided that Allied troops would occupy German territory situated to the west of the Rhine together with the bridgeheads. The territories occupied were distributed as follows: Belgian zone on the German-Netherlands frontier; British zone around Cologne; American zone around Coblenz; and the French zone extending over the Palatinate north of Alsace and the Saar Basin. These zones were to be evacuated successively according to a plan laid down in Article 429, the last to be freed after fifteen years; but the last paragraph of the Article provided that:

"If at that date the guarantees against unprovoked aggression by Germany are not considered sufficient by the Allied and Associated Governments, the evacuation of the occupying troops may be delayed to the extent regarded as necessary for the purpose of obtaining the required guarantees."

Article 430 provided that either during or after the occupation, if the Reparation Commission found that Germany refused to pay its obligations, "the whole or part of the area specified in Article 429 will be re-occupied immediately by the Allied and Associated Powers." Finally Article 432 provides that:

"All matters relating to the occupation and not provided for by the present Treaty shall be regulated by subsequent agreements, which Germany hereby undertakes to observe."

It may be observed that the Allied Powers under the Articles of Part XIV are given the right to re-occupy territories west of the Rhine, or to hold these territories beyond the time named for their evacuation. They are not explicitly authorized to occupy any further territory. Under Part VIII they are, however, authorized to take such measures "as the respective governments may determine to be necessary."

REPARATION CONFERENCES AND PRESSURE

Occupation of territories east of the Rhine was one of the first sanctions applied by the Allied Powers. As early as March, 1920,

France occupied Frankfort and Darmstadt, on an alleged infraction of the Treaty by Germany.[1] Further threats of occupation seem to have been made in July, 1920, at the Spa Conference. In January, 1921, at a further Conference held at Paris, the rates of payment decided upon at Spa were somewhat reduced and a threat was made to occupy the Ruhr district in case of default. Germany did not accept the Paris proposals and a further conference was summoned to meet in London in February, 1921, to hear the German counter proposals. These, in turn, were not satisfactory to the Allied Powers, who sent an ultimatum dated March 3rd, stating that they had decided to occupy Duisburg, Ruhrort and Düsseldorf as sanctions. French, Belgian and British troops at once proceeded with the occupation.

In a note, dated March 10th, 1921, the German Minister for Foreign Affairs protested to the League of Nations stating that the Allied Powers had occupied territory on the right bank of the Rhine, by reason of alleged infringement of stipulations of the Versailles Treaty regarding war criminals, disarmaments and the first instalment of payment (imposed by the Paris Conference of January, 1921). The note pointed out that the Allies did not name the provisions of the Treaty under which they had taken action, but that no provision justified occupation of territories on the right bank of the Rhine. Germany, therefore, appealed under Article 17 of the Covenant that the League take steps to "cause the immediate abandonment of the violent measures applied by the Allies." [2] The Secretary-General replied that the protest had been circulated to the Members of the League for their information. No further action was taken.

After two months of fruitless discussion, during which time Germany sought the intervention of the United States, and the Allied Powers held another conference in London in April, 1921, it appears that France announced its intention of occupying the Ruhr district and was prevented from doing so by the other Allies.[3] But at the end of April the Reparation Commission fixed the total to be paid by Germany at 132 million gold marks to which was added the obligation under Article 232 of the Treaty of Versailles, to reimburse the Allied Governments for all sums borrowed from them by Belgium up to November

[1] The infraction was that Germany had put down a Communist uprising in the Ruhr, this district being in the neutral zone where Germany was not permitted to use force.

[2] *Official Journal*, May, 1921; pp. 265-67.

[3] See *A Revision of the Treaty*, by J. M. Keynes, who says: "Thus, within a space of little more than a year the invasion of Germany, beyond the Rhine, was threatened five times and actually carried out twice." (p. 52.)

11th, 1918,[4] and on May 5th, 1921, the Allied Powers sent an ultimatum stating that unless Germany agreed to this decision they would proceed with preliminary measures for the occupation of the Ruhr; Germany thereupon agreed to the demands of the Reparation Commission which laid down the rates by which payment was to be made, and the first payment was made in September, 1921. In the course of the following fourteen months Germany asked for delay three times. The first time, in December, 1921, it requested a moratorium of two months which was granted, and made an offer to pay 720 million gold marks evenly distributed through the year together with delivery in kind worth 1,450 million, which offer was accepted.[5] The second request, for a delay of two and a half years, was made in the summer of 1922, and led to a modification of the schedule of payment. But the third request in October, 1922, was for an indefinite moratorium with a revision of the total fixed in the note of May 5th, 1921. This reopening of the question of payment also renewed the Allied ultimatum of that date.

Two Allied Conferences were held in December, 1922, and one early in January, 1923, for the purpose of dealing with this last German request. The suggestions of the British Government—the main points of which were the reduction of the total to fifty million gold marks, and suspension of payments for four years, the whole scheme in connection with a partial cancellation of inter-Allied debts—[6] was rejected by France, and the French Government made clear its intention to proceed in accordance with the Allied ultimatum of May 5th, 1921; while Great Britain announced its intention not to take part in such a procedure.[7]

It will be observed that both aggression and threats of aggression were resorted to by the Allied Powers between 1920 and 1923; that the Allied occupation of the right bank of the Rhine was resorted to as punishment for infractions of the Treaty by Germany; that as early as 1921 Germany raised a formal protest to the League of Nations, and made clear that the German Government considered Allied occupation of the right bank of the Rhine an infraction of the Treaty; that this alleged infraction of the Treaty by the Allied Powers was nowhere examined, nor questioned; that the Permanent Court of International Justice met for the first time six months before the occupation of the

[4] Moulton and Maguire, *Germany's Capacity to Pay;* p. 374.
[5] *Ibid.* [6] *Ibid.*, p. 376.
[7] A few days before the Allied Conference of January, 1923, in the United States, it was suggested that an international commission consider the question of reparations, but no action was taken thereon.

Ruhr, when threats of such occupation were becoming imminent; and that the interpretation of Articles 17 and 18 of the Annex to Part VIII of the Treaty of Versailles would have been a worthy subject for its first advisory opinion. Since no steps were taken to prevent further occupation or to force the evacuation of the territories already occupied it was but a natural consequence of what Mr. Asquith terms "benevolent impotence" of the other Allies and of the League of Nations, that France should have proceeded in its policy of force.

OCCUPATION OF THE RUHR

"Now it was that the Ruhr, which had been in the background of all the French plans and proposals for two years, emerged into prominence as the sole French specific—the Ruhr to be occupied preferably by the Allies, if not, then by France and such of her Allies as would go in with her."[8]

The French and Belgian Governments notified the German Government that engineers and experts would be sent to the Ruhr (protected by a limited number of French and Belgian troops) for the purpose of controlling the distribution of coal and coke, Germany having been declared in default in deliveries in 1922, by a majority of the Reparation Commission.[9] On January 11th, 1923, Essen was occupied, and the occupation of the surrounding territory proceeded rapidly from this center. The German Government answered with three actions: One was to protest to the Allied Powers against breach of the Treaty; the second was to admonish the population not to resist the occupying troops; the third was to order mine owners to deliver no coal to the French and Belgian authorities. On January 13th, the German Government notified the Reparation Commission that Germany would discontinue payment and delivery of reparations to the Powers occupying the Ruhr. To this note the Reparation Commission replied on January 26th, that it considered as abrogated all agreements with Germany since May 5th, 1921, and the full amount fixed by that schedule of payment was due.

There ensued a deadlock. The German attitude toward the French grew to be that known as passive resistance. No violence was resorted to against the occupying troops, but wherever they appeared postal and telegraph communications ceased, railway men went on strike, factories quietly closed, and mine owners refused to deliver coal. In retaliation

[8] Speech of Lord Curzon before the Imperial Conference, October 5, 1923, London *Times,* October 6, 1923.

[9] Great Britain gave the minority vote but made no formal protest. While no such protest was raised against the occupation of the Ruhr, the attitude of the United States was indicated by the withdrawal of the American troops from the Rhine.

the French occupation spread into widening areas, and the newly occupied districts were cut off from Germany and subjected to a blockade. Transports to and from Germany were stopped by the French, transports to and from France and Belgium were stopped within the territory and the result was incalculable misery of the population.

During a period of four months, January-May, 1923, Great Britain seems to have been quite undecided as to its course and no formal protest was made to France. The question of appeal to the League of Nations appears to have been raised at once and called forth from Mr. Bonar Law the following comment:[10]

"It has been suggested that we appeal to the League of Nations. There is no use in doing that if you know that the French will have nothing to do with it. * * * We decided that, since we could not prevent the French from taking action, we would lose and not gain by making a breach with our French Allies."

On February 20th, 1923, Mr. Lloyd George characterized the situation as follows:[11]

"Four weeks have gone, and I beg the Government to take action and take it now. I proposed the League of Nations in August, but there was no definite break, and therefore I could not formally propose it in a dispatch."

By the end of March the tone was more impatient and suspicious, as indicated in a speech by Mr. Asquith:[12]

"For the enforcement of what demand are the French continuing and extending the occupation of the Ruhr and the adjacent country? Surely this ought to be plainly stated, so that it can be universally understood. Is it for the purpose of seeking to obtain from Germany, in the shape of reparation, £6,600,000, which was the sum estimated, but which has become practically obsolete? Have the Government now got, or have they sought to get, from France any distinct and definite statement whether that is her object?"

At the end of April some evidence of action was forecast in a speech of Lord Curzon, who said:[13]

"We regard the problem as an international problem, which can only be decided by common action and not by isolated agreement between any two Powers or any small groups of Powers. As soon as a move is made our help will be forthcoming to both parties."

Encouraged by the British attitude, Germany, on May 2nd, 1923, in a note to the Allied Powers, stated its desire to relieve the tension

[10] The *Daily Telegraph,* February 14, 1923.
[11] London *Times,* February 20, 1923.
[12] *Daily Telegraph,* March 29, 1923.
[13] *Daily Telegraph,* April 21, 1923.

in the Ruhr and the German Government made an offer to fix the total obligation at thirty milliard gold marks, to be raised by July, 1931; to submit to an international commission in case of default of payment the whole question of Germany's capacity to pay; and before entering into negotiations, requested evacuation of the Ruhr. France and Belgium, on May 6th, at once repudiated this note, stating that they held the Ruhr as a guarantee for reparations and would enter into no negotiations whatsoever while passive resistance continued.

Considerable antagonism was aroused in Great Britain by the precipitate manner in which France and Belgium had replied instead of waiting for joint action by the Allied Powers. Nevertheless, on May 13th, Great Britain also rejected the German offer as inadequate. No mention was made of the Ruhr in the British note.

After this fruitless exchange of notes, conditions in the Ruhr became worse. Herr Krupp von Bohlen, President of the Krupp works at Essen, was arrested by French authorities on a charge of endangering the safety of the French troops of occupation, and was sentenced to fifteen years' imprisonment and a fine of 100,000,000 marks. Shortly after this arrest the first case of execution of a German by French courts-martial occurred. France proceeded further with the occupation of territories and the seizure of goods. The Communist movement, destructive of the morale of the Ruhr and the other occupied territories, spread, owing to the general discontent and poverty, and proved difficult to check, for the French appeared to tolerate agitation and hindered any movement on the part of German authorities to restore order, since armed police forces were only permitted where they were organized under French authority, and the Germans refused to submit to such organization, preferring to fight the Communists with irregular troops.

Accordingly, in a note of June 7th, 1923, to the Allied Powers, Germany renewed its request for a conference and for an international Commission to examine Germany's capacity to pay and made proposals for the assignment of guarantees as a security for payment. Although this note remained unanswered it led to important consequenccs. Meanwhile the French had begun to replace striking German railway workers by Frenchmen and thus were succeeding in exporting material; at the same time they did not raise the blockade and Germany did not stop the resistance; the condition of the inhabitants was thus becoming intolerable.

GREAT BRITAIN INTERVENES

Great Britain had encouraged the German offer of May 2nd, and had been disregarded by France and Belgium in their rejection of this offer. But having at last adopted an affirmative policy, the British Government was not willing to relinquish it. Therefore, on June 13th, 1923, Lord Curzon dispatched a note to the French and Belgian Governments, commenting on their uncompromising attitude toward the latest German proposal and requesting information as follows:

"What is the exact meaning attached by the French Government to the demand for the cessation of passive resistance? * * * From the statement which your Excellency made to me it would almost seem as if the cessation of passive resistance was regarded by the French Government as equivalent to active co-operation of the German population in whatever measures, coercive or other, the French authorities may see fit to take or order. This would be an excessive and an impracticable demand, even if it were conceded that French action in the Ruhr was justified and authorized under the Treaty of Versailles."

"How long, then, is the occupation to continue? And in what form? Is it to remain a purely military occupation? Or will it perhaps by stages assume the character of a police protection? Or, again, is it proposed to submit the territory to actual exploitation by or on behalf of France and Belgium?"[14] * * *

Both the French and Belgian answers confirmed that the occupation of the Ruhr was "only a means of securing payment of reparations." The French note also made the following observation:

"The fact that the Ruhr has been occupied this year by Belgium and France alone does not, in the view of the French Government, affect the nature of the measure which has been taken by virtue of Paragraphs 17 and 18 of Annex 2.

"The French Government do not ask the British Government to conform to their own view. They would, however, recall the fact that the British Government raised no objection on the score of legality either in December or in January last and they believe that at the present moment the question need not be discussed from this point of view. The Ruhr has been occupied. France and Belgium have declared publicly that they will only evacuate as a result of and in proportion to payments made by Germany. There remain therefore only questions of fact to be examined."

Both notes concluded by stating that the respective governments would enter into no negotiations until passive resistance had ceased. Without further discussing the Franco-Belgian attitude, Lord Curzon, on July 20th, submitted a note, together with a draft reply to

[14] Complete text of British note and French and Belgian answers in the *Manchester Guardian Weekly*, August 17, 1923.

Germany's offer of June 7th, to all the Allied Powers. The note stated that France and Belgium had made the cessation of passive resistance a condition to enter negotiations, and that the British Government was ready to press on Germany the necessity of abandoning that policy. Accordingly, the following points were proposed to the Allied Powers as a basis for a joint reply to Germany: [15]

"1. The German Government to undertake to abandon the policy of passive resistance.

"2. Steps to be taken upon the cessation of passive resistance for the resumption of the civil administration of the Ruhr, and to provide for the progressive evacuation of those areas.

"3. A body of impartial experts to be set up, charged with the duty of advising the Allied Governments and the Reparation Commission respectively as to Germany's capacity to pay, and as to the mode of payment to be prescribed. The co-operation of an American expert to be sought, and arrangements to be made for German experts to be consulted and heard.

"4. The same body, or a body similarly constituted, to be asked to advise the Reparation Commission as to the economic sureties and guarantees to be pledged by Germany to the Allies.

"5. Inter-allied discussions to be opened with as little delay as possible, whether by conference or otherwise, for the purpose of elaborating a comprehensive plan of a general and final financial settlement.

"6. So soon as the economic sureties and guarantees which Germany will have pledged to the Allies have been put into effective operation, the occupation of all German territory outside the limits laid down in the Treaty of Versailles to come to an end."

The French and Belgian replies to this note were almost identical and the French note disposed of the British summary of six points as follows: [16]

"1. Undertaking of the German Government to cease the policy of passive resistance—a fundamental question which in our eyes dominates all others, and must according to us be settled first.

"2. No compromise is possible as to the progressive evacuation of the Ruhr. It will only take place *pari passu* with payments. The cessation of passive resistance will bring about by itself the resumption of the economic life of the Ruhr. The High Command will take all the measures compatible with preservation of the pledges and the security of the troops in order to render the occupation as light as possible, but France cannot enter, directly or indirectly, into negotiations with Germany upon these latter points until all resistance has ceased.

"3 and 4. Conference of impartial experts.—The French Government can only refer to what has been said above on the subject. The Reparation Commission is a body set up by the Treaty which gave it all its powers. The Reparation Commission should only be guided by justice, equity, and

[15] *Daily Telegraph,* August 13, 1923.

[16] *Manchester Guardian Weekly,* August 10, 1923.

good faith. What other organism would have such an investiture, such power, and such right? What other organism would give such great guarantees of impartiality, and why should the German Government accept its conclusions when it does not recognise those of the Reparation Commission? The French Government requires to be enlightened on all these points.

"5. The British Government demands that an inter-Allied discussion should take place to elaborate a complete plan for a final general financial settlement. Has not this settlement been made? Has not the Reparation Commission itself all the powers to carry out this settlement, to lighten, extend, or shorten its execution? Would it not be contrary to the Treaty to go back upon the principle of settlement and the fixing of the total? In any case we should like to know what the British Government means by 'A general and financial settlement.' Would the question of inter-Allied debt be included?

"6. Finally, as regards the sixth point, the French and Belgian Governments can only repeat that they will only abandon the Ruhr against effective payments by Germany and in proportion to these payments.

"In the last paragraph of its letter the British Government mentioned the question of security. We should be always happy to discuss that question with it, but it has nothing to do with the Ruhr, and it seems preferable that the two questions should be considered apart."[17]

Neither note alluded to the British draft reply to Germany, nor made any suggestion for counter-proposals to be made to Germany, other than the insistent demand for cessation of passive resistance.

In a note dated August 11th, 1923, on the subject of reparations, the British Government openly condemned the French and Belgian attitude. The note reminded France and Belgium that Great Britain had offered in January, 1923, to cancel the French and Belgian debts to her, on condition that those countries agreed to reduce the sum total of German debts. It continued to point out that the French claim for 132 milliard gold marks was based on the estimate of the Reparation Commission, made in May, 1921, and stated that:[18]

"The Reparation Commission's finding of 132 milliards of gold marks was a simple estimate of the amount of the damages for which compensation was claimable under the Treaty without any regard to the question of Germany's capacity to pay them."

It further observed that, since there was no American representative on the Reparation Commission, France and Belgium, with the aid of the casting vote of the French Chairman, were able to outvote Great Britain and Italy at any time. Thus, the Reparation Com-

[17] This statement by M. Poincaré seems to answer effectively the argument often made that the occupation of the Ruhr was necessary for French security.

[18] Complete text of the British note of August 11th and the French and Belgian replies of August 17th and 20th, respectively, are reprinted in *International Conciliation Series No. III,* No. 193 (Am. Association of Int. Conciliation).

mission did not seem to be an adequate body for the impartial inquiry requested by Germany. France and Belgium were reminded that the idea of an inquiry by experts originated in the United States. On the subject of the Ruhr, the note stated the following:

"France and Belgium hold that the occupation has been effected in virtue of the authority conferred by paragraph 18 of Annex II to Part VIII of the Treaty. The German Government have consistently contended that such an operation does not, on a proper interpretation of that paragraph, fall within the category of 'economic and financial prohibitions and reprisals and in general such other measures as the respective governments may determine to be necessary in the circumstances.'

"The highest legal authorities in Great Britain have advised His Majesty's Government that the contention of the German Government is well founded, and His Majesty's Government have never concealed their view that the Franco-Belgian action in occupying the Ruhr, quite apart from the question of expediency, was not a sanction authorized by the Treaty itself. But they would be quite willing that this or any other difference respecting the legal interpretation of vital provisions of the Treaty—in so far as they cannot be resolved by unanimous decision of the Reparation Commission under paragraph 12 of Annex II—whether arising between the Allied governments and the German Government, or between different Allied governments, should automatically be referred to the International Court of Justice at The Hague or other suitable arbitration."

On the subject of the British participation in the occupation of Düsseldorf, Duisburg and Ruhrort, the note stated:

"The action then taken or threatened was never claimed to be in pursuance of the reparation clauses of the Treaty. The Allies jointly decided to threaten Germany with the occupation of further territory just as they might have threatened her with a renewal of war, for her failure to perform her treaty obligations, some of which had no connection whatever with reparations."

The British Government pointed out that paragraph 18 of Annex II did not authorize military occupation of territory and that Article 430 specifically stated that in case of default by Germany, territory already evacuated might be reoccupied. If the French contended that they had entered the Ruhr not for "the prompt or complete payment of reparations, but the breaking of Germany's resistance," Great Britain disagreed with this policy. If France and Belgium had no intention of evacuating the Ruhr until complete payment of the 132 milliards had been made, the occupation would last at least thirty-six years. Great Britain was forced to object to such a situation as one—to use the words of the 11th Article of the Covenant of the League of Nations—"to disturb international peace and the good understanding between nations upon which peace depends." In conclusion the pro-

posal of January, 1923, was reiterated, and an attached memorandum set forth the British plan for the adjustment of the German and Inter-Allied debts.

The French reply of August 20th, 1923, however, proved unconciliatory. The French Government stated that Great Britain had composed the draft reply to Germany with total disregard of French interests; that any inquiry by experts into Germany's capacity to pay would be useless, since there was no will to pay in that country; that if the Reparation Commission were replaced by the international commission suggested by Great Britain, that act would amount to a revision of the Treaty of Versailles. As to the British claim of illegality of the Ruhr occupation France stated that the Spa Protocol contained a clause as follows:

"If by November 15, 1920, it is ascertained that the total deliveries for August, September and October, 1920, have not reached 6,000,000 tons, the Allies will proceed to the occupation of a further portion of German territory, either the region of the Ruhr or some other."

Accordingly, Great Britain at that time had raised no objections to the legality of the occupation, and also in 1920 and 1921 British troops had participated in occupations. France protested against the assumption that she wished to annex the Ruhr, and denied that any danger of war existed to justify Great Britain's "threat" of an appeal to the League; declined all responsibility for the economic crisis in Germany and in Great Britain; and rejected the British proposals for regulation of Inter-Allied debts. The covering statement to this note reiterated that Articles 17 and 18 of Annex II, part VIII, of the Treaty gave France a right to occupy this territory and to take independent action. The French intention in occupying the territory was described as follows: [19]

"Nothing was to be changed in the normal life and economic activity of the country; a commission of Allied engineers would merely control the operations of the Kohlen Syndikat, with a view to assuring the regular delivery of the quantities of coal and coke due from Germany; the same commission would control the industrial production of the factories of the Ruhr, would look after the collection of the coal tax, a part or the whole of which would be handed over to the Reparation treasury. A commission of Customs officers, together with the German Customs and fiscal agents, would assure the collection of certain taxes, the product of which would also have served for reparations; and finally, a commission of foresters would control the exploitation of the State forests, which would be continued by German foresters, so that the payments in wood should henceforth take place

[19] *Daily Telegraph,* August 23, 1923.

in conformity with the Treaty. It was, in a word, a friendly arrangement, a pacific collaboration, which we offered very sincerely to Germany when we entered the Ruhr."

The covering statement finally summed up the French claim, namely, that the Reparation Commission be left to complete its work, and be "strengthened instead of weakened."

The Belgian note observed on the legality of the Ruhr occupation that it was "easily explained" by the "precise and formal text of paragraph 18 of Annex II to Part VIII," of the Treaty of Versailles, and in spite of a more conciliatory tone coincided on the whole with the French point of view. Neither note considered the British proposal of referring the question to the Permanent Court.

It will be observed that here was presented a question of the interpretation of a treaty. France asserted that paragraph 18 of Annex II, Part VIII, of the Treaty of Versailles gave her a right to invade the Ruhr; Great Britain denied this right. But Great Britain had taken part in other occupations of German territory and had therefore sanctioned the principle; the policies of Great Britain and France disagreed when France resorted to a measure as violent as the occupation of the Ruhr. But Great Britain was not in a position to take any steps against such action, having participated in similar actions herself. Accordingly Great Britain was silent for four months while the situation of the British army of occupation in Cologne grew more and more difficult owing to the disorder created by the passive resistance, strikes and Separatist and Communist movements—outgrowths of the French occupation—while economic difficulties accumulated owing to the disappearance of Ruhr coal from the markets of the world. Great Britain then tried means of pacific settlement inducing Germany to make an offer and attempting to persuade France to accept. Only when such means had failed did Great Britain resort to the question of legality and justice, and having a weak cause, failed. The refusal of the French occurred at the end of August and it would seem natural that Great Britain and Italy would thereupon have acted in concert and taken the case to the Permanent Court. That this did not happen is partly due to the Italian bombardment of Corfu, which occurred at the end of August, and after which Italy was in need of French support.[20] The more vital reason was the fall of the Cuno Government in Germany on August 14th, when it became evident that the Stresemann Government would not continue the passive resistance. In effect, unofficial negotiations were undertaken early in September

[20] Chap. IX; p. 198.

and on September 24th cessation of the resistance was ordered. The occupation of the Ruhr thus passed into a new phase.

THE TURNING POINT

It was generally expected that with the cessation of passive resistance, negotiations would be undertaken to find a sound basis for payments to be rendered by Germany. On October 5th, Lord Curzon, speaking before the Imperial Conference, expressed this expectation by raising the question as to what should be the next step. "The French Government knows" * * he said, "that we await the next proposals from them."[21] The next proposal of the French Government was, however, that payments in kind be resumed and conditions prevailing before January 11th, 1923, be restored in the Ruhr, before France would enter into any negotiations with Germany. In vain did the German Government point out that technical reorganization was necessary before deliveries in kind could be resumed; and that for such purpose negotiations would be necessary, for, at the time, Germany was not in a position to finance the deliveries. The French demand for their resumption was as unyielding as had been the demand for cessation of passive resistance. Another deadlock threatened, while monarchists and nationalists in Bavaria, communists in Saxony and separatists in the Rhineland and Palatinate, added the threat of political disintegration to the economic disaster of Germany.

At this point, on October 13th, 1923, Lord Curzon requested the co-operation of the United States in an Allied Conference for the ascertainment of Germany's capacity to pay, and added a further suggestion that an inquiry might be entrusted to the Reparation Commission or to a body appointed by it were the United States willing to appoint an official or unofficial delegate.[22]

On October 15th, 1923, Mr. Hughes replied expressing agreement with the plan of appointing an international advisory commission of experts, on which no doubt "competent American citizens would be willing to participate." Great Britain, Italy and Belgium were unanimous in their desire to invite an American representative and establish the Commission without delay. M. Poincaré, however, while agreeing to the appointment of the commission, made the restrictions that the experts were to be appointed by the Reparation Commission; the sum of 132 milliard gold marks as fixed in May, 1921, was not to be

[21] *Daily Telegraph,* October 6, 1923.

[22] For complete text of Lord Curzon's note and the United States' reply see *Daily Telegraph,* October 26, 1923.

reduced; and the occupation of the Ruhr was not to be discussed. He recognized within the competence of the experts the following subjects: (1) Germany's present capacity to pay; (2) new method of payment; (3) the renovation of German finance; (4) a new monetary system. M. Poincaré made clear that he considered these restrictions to be in conformity with the Treaty of Versailles. Early in November, however, he was advised that under such restrictions United States citizens would not be willing to co-operate in the inquiry.

While this question was pending new aspects had arisen. Early in November the German Government refused to agree to the resumption of Allied Military Control of Germany for the purpose of examining the status of Germany's armed forces.[23] At the same time the exiled Crown Prince requested and was granted permission by the German Government to return to the country. The Ambassadors' Conference became the scene of violent differences. France desired to send a note of protest to Germany and threatened application of immediate sanctions, namely, further occupation of territory, unless Germany expelled the Crown Prince and guaranteed to facilitate allied military control. Great Britain did not insist on the expulsion of the Crown Prince; preferred gradual resumption of military control, and not only refused to join France in military action, but denied the right of France to take such action alone. Pressure was exercised on M. Poincaré by a threat that Great Britain would insist that France pay its debts, and by the fact that a similar question was raised in the United States.

At the same time France and Great Britain also disagreed in the Reparation Commission, when M. Barthou proposed on November 13th that Germany be given a hearing, after which a committee of experts should be entrusted to inquire into Germany's capacity to pay. The inquiry was to be made under the restrictions as indicated by M. Poincaré, with an additional restriction of dealing with payments only up to 1927. Sir John Bradbury, however, criticized the proposal and expressed his doubts as to "whether, after the events of the past eleven months, the machinery of Part 8 of the Treaty of Versailles is not so completely compromised as to have become incapable of functioning."[24] He recommended that the Commission was to investigate the causes that had led to Germany's present condition and was to "apply remedies fearlessly."

[23] See Chap. III, p. 64, for German request that the League of Nations take over military control.

[24] London *Times*, November 14, 1923.

While relations between France and Great Britain grew more and more strained, M. Poincaré, in a speech on November 18th at Neuilly, made the following remarks: [25]

"The Reparation Commission will hear the Germans, appoint the experts it chooses, estimate Germany's capacity to pay today, tomorrow, and later, and every time it holds it to be necessary it will fix the figures as it considers equitable, and, with the pledges that we hold, and which we will only give up in return for final payments, we shall be able to bring Germany to pay her debts. * * * * *

"Sanctions are necessary. We will take them if we do not obtain satisfaction. Further, we are determined not to evacuate the territories occupied in virtue of the Treaty until all the clauses signed at Versailles have been fully executed and until we are solidly fortified against fresh possibilities of aggression."

The speech clearly indicated French intention to take action independently and to continue the occupation of the Ruhr. The question of the legality of both these proceedings was completely ignored. But when rupture seemed practically inevitable, at a meeting of the Conference of Ambassadors on November 19th, when it became clear that France had not even the support of Belgium, the attitude of M. Poincaré changed. The French Foreign Office explained that in his speech at Neuilly, when he mentioned sanctions, M. Poincaré had not meant the Ruhr. Concessions were made on all sides and two Allied notes to Germany were agreed upon and dispatched on November 22nd, on the subjects of the Allied Military Control and of the return of the Crown Prince. One note reminded the German Government that Article 206 of the Versailles Treaty provided for Allied Military Control of Germany, and in the event of German opposition "the Allied Governments reserve the right to take such measures as may appear proper;" [26] the second note stated that the Allies held the German Government fully responsible for any consequences that might result from the presence of the Crown Prince in Germany.

Thus a break was averted and the *entente* preserved, but over these questions the legality of the Ruhr occupation appears to have been forgotten. The note on military control was as vague as the provisions of Article 18, Annex II to Part VIII, of the Treaty of Versailles and left an opening for independent French action, should M. Poincaré have chosen to interpret "the right to take measures" in the manner he had interpreted the above mentioned article. But the question of legality was there—a spectre haunting every agreement

[25] *Daily Telegraph*, November 19, 1923.
[26] *Manchester Guardian Weekly*, November 23, 1923.

and compromise, causing directly or indirectly misunderstanding and misinterpretation. It became actual again in the following manner:

On November 23rd the Inter-Allied Mission for the Control of Factories and Mines (consisting of French and Belgian engineers) reached an agreement with the majority of industries in the Ruhr, which gave the French and Belgians practically complete control over the Ruhr output. France and Belgium desired to deduct the cost of their occupation of the Ruhr from payments obtained under the agreement and to use the rest for reparation purposes. Great Britain objected to this proposal and claimed that the occupation of the Ruhr, since it was an independent action of France and Belgium, did not come within the provisions made for the payment of costs of Inter-Allied occupations, and that payments made by Germany were to be divided, according to the Spa Protocol, between the Allies. At the same time Germany also protested to the Reparation Commission and demanded that the legality of the Ruhr occupation be examined before German payments were used to cover the expenses of that occupation. But Great Britain had denied the legality of the occupation of the Ruhr, and thus could not claim that reparations resulting from such occupation came under the Spa Protocol. Accordingly, the point was not insisted upon, Great Britain was satisfied with a compromise by which the new German currency, the *Rentenmark*, was to be admitted in the occupied territories instead of the establishment of the proposed bank under French control as had been planned, and did not further insist upon examination of the legality of France's position or of the use made of payments obtained in the Ruhr. Germany, without Great Britain to support its claim, refrained from pressing the question. Thus, for reasons of expediency, the vital question of legality was again put aside.

THE DAWES REPORT

At a meeting of the Reparation Commission on November 30th, a compromise was reached on the question of the Committee of Experts. Two committees were to be established: the first for the purpose of balancing the budget and establishing German currency and the second for the purpose of estimating and finding means to return to Germany the capital placed in foreign countries.[27] The United States was invited to send delegates, and, on December 11th, though declining to take

[27] A few days after this decision of the Reparation Commission, M. de Jouvenel summed up the French policy as follows: "Either the Ruhr or the Rhine. Either an occupied Ruhr, or a free, autonomous and guaranteed Rhineland."—(*Le Matin*, December 5, 1923.)

part officially, it replied that American experts would participate in the work. The two Committees of Experts were nominated by the Reparation Commission on December 26th, 1923, and the First Committee met on January 15th and began its work under the chairmanship of Gen. Charles G. Dawes, the American expert.

The report of the experts was submitted to the Reparation Commission on April 9th, 1924, and unanimously approved on April 11th.[28] It remained within the restrictions imposed by M. Poincaré in that no reference is made to the sum total of German debt, or to the occupation of the Ruhr; but to this latter the report of the Dawes Committee alludes indirectly as follows:

"The committee has had to consider to what extent the balancing of the budget and stabilization of the currency could be re-established permanently in Germany as she actually is at the present moment, with limitations as to her fiscal and economic rights over a part of her area.

"We should say at the outset we have been unable to find any practical means for insuring permanent stability in the budget of currency under these conditions, and we think it unlikely that such means exist.

"The solution of the double problem submitted to us implies, indeed, restoration of Germany's credit, both externally and internally, and it has appeared to us impossible to provide for this restoration under the conditions mentioned. We have therefore been compelled to make the assumption that the fiscal and economic unity of the Reich will be restored. Our whole report is based on this hypothesis."

The governments concerned announced their acceptance of the report less than a week after its approval by the Reparation Commission. The French reply contained the following passage:[29]

"The Experts have, moreover, stated that, in their opinion, the economic and financial unity of the Reich should be restored as soon as the plan recommended is put into execution. Since the Commission has decided to accept the Experts' conclusions as a whole, the French Government ventures to assume that on this point of capital importance it does not intend to modify these conclusions. The Governments will have to consider together under what conditions the securities at present held by France and Belgium shall be merged into or exchanged for those which will be handed over as an undivided whole to all the Allies. These operations cannot, however, take place until Germany has effectively put the plan into execution, and it is for the Governments to determine by common agreement the guarantees which these operations may render necessary."

[28] This discussion contains no summary of the recommendations of the Dawes Commission for two reasons: (1) The recommendations are not directly related to the controversy between France and Great Britain, namely, the legality of the occupation of the Ruhr; and (2) at the present writing the Inter-Allied Conference meeting in London is discussing the methods of application of the Dawes Report and any presentation of it must appear premature.

[29] The London *Times*, April 28th, 1924.

It was apparent from this note that France intended to hold the Ruhr at least until the Dawes system had been tried out. The other Allies claimed, however, that the two systems—occupation of the Ruhr and Dawes plan—could not be applied simultaneously. The fall of Poincaré on May 13th, 1924, put an end to a situation that was again becoming critical, and M. Herriot, his successor, stated that France would evacuate the Ruhr when the plan of the experts had been definitely worked out and was ready to be applied. This attitude was expressed in his speech of June 17th, in which he set forth the program of the Government:[30]

"France is hostile to a policy of occupation and seizure of territorial pledges, but she is faced with the necessity of shielding not only France but all the nations against a return of Pan-Germanism. The Government does not think it possible to evacuate the Ruhr before the pledges provided for by the Experts, together with the other guarantees, have been entrusted to the international bodies qualified to carry them out." [31]

Accordingly, the evacuation of the Ruhr depends upon how soon the experts' reports can be put into operation. M. Herriot and Mr. MacDonald, at their meeting at Chequers on June 21st, 1924, reached an agreement to call an Inter-Allied Conference for the purpose of settling this question. In calling this Conference, Mr. MacDonald attempted to institute a new reparation policy. In a note of June 25th, inviting Belgium to the Conference, he said in part:[32]

"Those recommendations [the Dawes Report] will impose upon Germany obligations altogether beyond what was laid down by the Treaty of Versailles. It will be necessary, therefore, that they should be embodied in some kind of formal document or agreement to be signed by the powers who will be responsible for their execution. * * *

"It would be undesirable to give to the instrument of agreement a form which would have the appearance of a treaty explicitly modifying the Treaty of Versailles. The most convenient form would be that of a protocol which might contain provisions covering the following points:

"(1) An undertaking by all the signatory Governments to stand by the recommendations of the Dawes report in their entirety.

"(2) A pledge by the German Government to put into execution by a given date all the legislative or other measures prescribed by the report.

[30] *Manchester Guardian Weekly,* June 20th, 1924.

[31] A change of French policy in the Ruhr was indicated by suspension of sentences for political offences and authorization for return to the occupied territories given to all persons expelled since January 11th, 1923. On June 27th, 1924, it was reported that so far 14,860 persons had been authorized to re-enter the French zone, and that about 60,000 persons expected to profit by such authorization. (New York *Times,* June 28, 1924.)

[32] New York *Times,* July 9th, 1924. Similar notes were sent to Italy and Japan; for text, see *ibid.*

"(3) An undertaking by the Allied Governments to withdraw by a given date (which might be fixed at fourteen days after the date indicated in No. 2 above) all the fiscal and economic sanctions and other arrangements affecting the economic activities of the German Reich and now in force in German territory.

"(4) An agreement by the Governments that these sanctions would not be reimposed except in case of flagrant failure on the part of the German Government to fulfill the conditions embodied in the report itself and designation of the authorities who would be charged with the duty of deciding if the necessity arose of whether such default had indeed taken place. This duty cannot properly be entrusted to the Reparation Commission, whose functions are strictly determined by the Treaty of Versailles, since the engagements to be entered into under the Dawes scheme lie to a large extent outside of the scope of that Treaty, so an impartial and independent authority will have to be agreed upon who could properly undertake this duty and whose decision would be accepted as binding on all the parties concerned.

"(5) A provision that any dispute as to the proper interpretation of the articles of the protocol shall be referred to some independent arbitral body, such as the International Court at The Hague."

This idea could not be put into immediate practice, since France insisted that the powers of the Reparation Commission remain unmodified. To save the endangered Conference, Mr. MacDonald abandoned his point of view, and on July 9th issued a joint statement with M. Herriot to the effect that the powers of the Reparation Commission, and specifically the power to declare Germany at default, remain unaffected. The Inter-Allied Conference accordingly met on July 16th, 1924, in London. In addition to representatives of Great Britain, France, Belgium, Italy and Japan, the United States Ambassador to Great Britain, Mr. Frank B. Kellogg and Colonel James A. Logan, American observer on the Reparation Commission, attended the discussions. The agreement thus far appears to be a compromise between the British and French views, since the Reparation Commission may declare Germany in default by a unanimous vote, but if this declaration is made by majority vote only, any member of the Commission may appeal to an Arbitral Commission, whose decision shall be final. The Arbitral Commission is to consist of three members, to be appointed unanimously by the Reparation Commission, or failing such agreement, by the President of the Permanent Court of International Justice; in either case the chairman is to be a citizen of the United States. A similar system of arbitration is to be followed with reference to deliveries in kind, transfer of cash, and changes to be made in the procedure established at the London Conference. France and Belgium also presented draft proposals for the evacuation of the Ruhr, which

proposals are to be worked out presumably in agreement with Germany. German delegates were invited on August 2nd to join the Conference and to discuss the programme thus far agreed upon.

THE LEAGUE OF NATIONS

The record of the aggression of the Ruhr and of the legal questions arising from that aggression have been given. To complete the record, a summary of the attitude of the League follows:

It will be remembered that public opinion in Great Britain, after the occupation, at once favored turning to the League. On May 1st, 1923, M. Barthou, President of the Reparation Commission, expressed the French point of view as follows:[33]

"The League would exceed its mandate and compromise its work if it yielded to possibly generous but imprudent and even dangerous suggestions that it invoke before it questions which are not its province, such as the problem of reparations or that of the Ruhr occupation."

Owing to this attitude, no member state called the attention of the League to the Ruhr situation until September, 1923. The International Federation of Trades Unions, at Amsterdam, representing twenty million working men, forwarded to the Assembly a memorandum which urged that for the safeguarding of peace and the reorganization of Europe, the League take up the problem of reparations. On September 22nd, Prof. Gilbert Murray, speaking before the Assembly, referred to this memorandum and to the right and duty of the League as follows:[34]

"Has the League any right to offer its assistance? I do not for a moment assert any legal right. It is quite true, anyone may say, that this dispute does not lead to war—certainly not yet. But it has produced a situation, or allowed a situation to grow up, in which two nations have found it necessary to increase their air forces, owing to anxiety confessedly connected by each with fear of the other. That is not a matter to be regarded with absolute indifference either by the nations themselves or by the League; as regards the future, I cannot but feel that the danger of war is real. I know in history no surer method of sowing the seeds of war than the occupation of the territory of any nation by a foreign Power. But I lay no stress on the possible danger of war.

"There is another danger—nay, more. There is the present actuality of the slow, grinding destruction under our eyes of a great and populous nation. No League like this, no League with our principles, no ordinary collection of men with human feelings, can watch that process without anxiety and dismay."

[33] New York *Herald,* May 2d, 1923.

[34] *Verbatim Record of the Fourth Assembly,* Eleventh Meeting, p. 3.

This speech, together with further allusions to the situation by other representatives, was heard and noted by the Assembly, but no constructive action was suggested. At the same time, the second Commission of the Assembly discussed a motion referring to the limitations set on the League's economic work by the unsettled reparations question. This motion had to be withdrawn owing to the objection of the French representative, who stated that the Second Commission was supposed to deal only with economic questions and this question was political.[35]

When the Labor Government came into power in Great Britain, it emphasized its desire to strengthen the League, but it appeared that the submission of the Ruhr occupation and the interpretation of the Treaty were not among the questions that Great Britain would be in a position to submit to that body.

The Dawes Committee, in March, 1924, heard Sir Arthur Salter, Director of the Economic and Financial Section of the League Secretariat, and this hearing, it was reported from Geneva, led to the interpretation that the League would be requested to assist in the reorganization of German finances. This request was not made, but the League, having been quiet on the reparations issue for four and a half years of its existence, now apparently claims some credit for the Dawes Report. Prof. Gilbert Murray, in a letter to the London *Times,* dated June 3rd, makes the following statements, basing them on the similarity of certain aspects of the Dawes report to the economic reconstruction plans of Austria and Hungary:[36]

"That Committee [Dawes], for quite intelligible reasons, kept its report noticeably free, except in one small matter, from any reference to the League of Nations. But it is instructive to see what a great influence the League and its experience have exercised on the actual substance of the Report. * * *

"It is clear that the new type of international problem, both economic and financial, which confronts us since the war demands a new kind of treatment, and that the League of Nations, acting through its expert committees, has done its best to devise the sort of treatment required. What we now see is that a perfectly independent body, like the Dawes Committee, when facing a similar problem, finds itself led by the logic of circumstances to decide that the League methods are the best it can find. A very satisfactory conclusion!"

If such is the case, it is but regrettable that the work of the League as protector of peace and guardian of justice is not as satisfactory as its economic work.

[35] *Records of the Fourth Assembly,* Minutes of the Second Committee; p. 32.
[36] London *Times,* June 4th, 1923.

It would seem that the League was barred from action owing to the French interpretation of the Treaty of Versailles. If the occupation of the Ruhr is in accordance with the Treaty, France cannot be accused of aggression, and Articles 10, 11 and 16 of the Covenant were inapplicable.

COMMENTARY

It appears that the question of reparations is to be settled through the intervention of citizens of the United States who have been instrumental in bringing about an inquiry and that the Inter-Allied Conference, meeting in London, will bring about the evacuation of the Ruhr without resort to any of the existing peace machinery. Whatever settlement is effected, and whatever the experience gained, there remain unanswered the following questions concerning the right to occupy territory as a means of enforcing the payments of reparations:

Does Article 18, Annex II of Part VIII, of the Treaty of Versailles authorize territorial occupation? If so, what are the limits of such occupation? According to Great Britain, the occupation of single cities on the right bank of the Rhine was authorized and within the permissible limits; according to M. Poincaré, the article has no limits; according to the German Government, no occupation on the right bank of the Rhine is authorized in the Treaty.

Does Article 18, Annex II of Part VIII, of the Treaty of Versailles authorize any of the Allied Powers to take independent action? If so, are there any restrictions placed on a Power acting independently, especially in cases affecting the interests of all the Allied Powers? Great Britain appeared to question whether the disposal of reparations collected in the Ruhr, since it affected the interests of all the Allies, was a question in which France and Belgium could act independently; those two countries, however, consider independent disposal of the Ruhr payments fully justified.

Is there any provision in the Treaty of Versailles authorizing occupation of German territory on the right bank of the Rhine for the purpose of ensuring the security of France? France appears to claim a moral justification for the occupation of the Ruhr in pointing to the necessity of safeguarding French security. If there is any article in the Treaty which can be interpreted to this effect, it gives rise to dangerous principles, for nowhere is laid down who is to be the judge of whether such security is imperilled. If, however, the 440 articles of the Treaty have not provided for the security of France, it is clear that

the Treaty stands in need of revision—a revision in which the principle of the occupation of territory, as a means of collecting reparations, shall be clearly defined. Otherwise, the precedent established by France may well lead to the extension throughout Europe of this method of collecting reparations—a method which insures war, not peace.

But entirely aside from the success or failure of the Dawes plan, which is concerned primarily with economic solutions and political ease between Great Britain and France, many Americans will regret that in so grave a matter there has been no juridical construction of the allegations concerning the Treaty; and that a precedent has been established for states to follow as a justification for the application of force in the settlement of disputes, thus destroying still further integrity and good faith which is the very essence of treaty agreements. Long after reparations have been paid and the sufferings of people dimmed, this precedent will be relied upon, unless war shall have been abolished.

ANNEX I

COVENANT OF THE LEAGUE OF NATIONS

THE HIGH CONTRACTING PARTIES

In order to promote international co-operation and to achieve international peace and security

by the acceptance of obligations not to resort to war,

by the prescription of open, just and honorable relations between nations,

by the firm establishment of the understandings of international law as the actual rule of conduct among Governments, and

by the maintenance of justice and a scrupulous respect for all treaty obligations in the dealings of organized peoples with one another, Agree to this Covenant of the League of Nations.

ARTICLE 1.

The original Members of the League of Nations shall be those of the Signatories which are named in the Annex to this Covenant and also such of those other States named in the Annex as shall accede without reservation to this Covenant. Such accessions shall be effected by a declaration deposited with the Secretariat within two months of the coming into force of the Covenant. Notice thereof shall be sent to all other Members of the League.

Any fully self-governing State, Dominion or Colony not named in the Annex may become a Member of the League if its admission is agreed to by two-thirds of the Assembly, provided that it shall give effective guarantees of its sincere intention to observe its international obligations, and shall accept such regulations as may be prescribed by the League in regard to its military, naval and air forces and armaments.

Any Member of the League may, after two years' notice of its intention so to do, withdraw from the League, provided that all its international obligations and all its obligations under this Covenant shall have been fulfilled at the time of its withdrawal.

ARTICLE 2.

The action of the League under this Covenant shall be effected through the instrumentality of an Assembly and of a Council, with a permanent Secretariat.

ARTICLE 3.

The Assembly shall consist of representatives of the Members of the League.

The Assembly shall meet at stated intervals and from time to time as occasion may require at the Seat of the League, or at such other place as may be decided upon.

The Assembly may deal at its meetings with any matter within the sphere of action of the League or affecting the peace of the world.

At meetings of the Assembly each Member of the League shall have one vote, and may have not more than three Representatives.

ARTICLE 4.

The Council shall consist of representatives of the Principal Allied and Associated Powers [United States of America, the British Empire, France, Italy and Japan],

together with Representatives of four other Members of the League.[1] These four Members of the League shall be selected by the Assembly from time to time in its discretion. Until the appointment of the Representatives of the four Members of the League first selected by the Assembly, Representatives of Belgium, Brazil, Greece and Spain shall be Members of the Council.

With the approval of the majority of the Assembly, the Council may name additional Members of the League, whose Representatives shall always be Members of the Council; the Council with like approval may increase the number of Members of the League to be selected by the Assembly for representation on the Council.[2]

The Council shall meet from time to time as occasion may require, and at least once a year, at the Seat of the League, or at such other place as may be decided upon.

The Council may deal at its meetings with any matter within the sphere of action of the League or affecting the peace of the world.

Any Member of the League not represented on the Council shall be invited to send a Representative to sit as a Member at any meeting of the Council during the consideration of matters specially affecting the interests of that Member of the League.

At meetings of the Council, each Member of the League represented on the Council shall have one vote, and may have not more than one Representative.

ARTICLE 5.

Except where otherwise expressly provided in this Covenant, or by the terms of the present Treaty, decisions at any meeting of the Assembly or of the Council shall require the agreement of all the Members of the League represented at the meeting.

All matters of procedure at meetings of the Assembly or of the Council, including the appointment of Committees to investigate particular matters, shall be regulated by the Assembly or by the Council and may be decided by a majority of the Members of the League represented at the meeting.

The first meeting of the Assembly and the first meeting of the Council shall be summoned by the President of the United States of America.

ARTICLE 6.

The permanent Secretariat shall be established at the Seat of the League. The Secretariat shall comprise a Secretary-General and such secretaries and staff as may be required.

The first Secretary-General shall be the person named in the Annex; thereafter

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[1] At the request of the Council, the Assembly on September 25, 1922, approved "the decision of the Council to increase the number of Members of the League chosen by the Assembly for representation on the Council from four to six." The decision was effective immediately and Belgium, Brazil, China, Spain, Sweden and Uruguay were elected to send Representatives to the Council up to the Fourth Assembly, September, 1923.

[2] The Assembly voted in favor of the following amendment, forming a third paragraph, in 1921, and the Members are now deciding upon its ratification:

"The Assembly shall fix by a two-thirds majority the rules dealing with the election of the non-permanent Members of the Council, and particularly such regulations as relate to their term of office and the conditions of re-eligibility."

the Secretary-General shall be appointed by the Council with the approval of the majority of the Assembly.

The secretaries and the staff of the Secretariat shall be appointed by the Secretary-General with the approval of the Council.

The Secretary-General shall act in that capacity at all meetings of the Assembly and of the Council.

The expenses of the Secretariat shall be borne by the Members of the League in accordance with the apportionment of the expenses of the International Bureau of the Universal Postal Union.[3]

ARTICLE 7.

The Seat of the League is established at Geneva.

The Council may at any time decide that the Seat of the League shall be established elsewhere.

All positions under or in connection with the League, including the Secretariat, shall be open equally to men and women.

Representatives of the Members of the League and officials of the League when engaged on the business of the League shall enjoy diplomatic privileges and immunities.

The buildings and other property occupied by the League or its officials or by Representatives attending its meetings shall be inviolable.

ARTICLE 8.

The Members of the League recognize that the maintenance of peace requires the reduction of national armaments to the lowest point consistent with national safety and the enforcement by common action of international obligations.

The Council, taking account of the geographical situation and circumstances of each State, shall formulate plans for such reduction for the consideration and action of the several Governments.

Such plans shall be subject to reconsideration and revision at least every 10 years.

After these plans shall have been adopted by the several Governments, the limits of armaments therein fixed shall not be exceeded without the concurrence of the Council.

The Members of the League agree that the manufacture by private enterprise of munitions and implements of war is open to grave objections. The Council shall advise how the evil effects attendant upon such manufacture can be prevented, due regard being had to the necessities of those Members of the League which are not able to manufacture the munitions and implements of war necessary for their safety.

The Members of the League undertake to interchange full and frank information as to the scale of their armaments, their military, naval and air programs and the condition of such of their industries as are adaptable to warlike purposes.

ARTICLE 9.

A permanent Commission shall be constituted to advise the Council on the execution of the provisions of Articles 1 and 8 and on military, naval and air questions generally.

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[3] The Assembly voted in favor of the following amendment, to be paragraph 5, in 1921. This amendment has been ratified by Brazil and is the first and only amendment now in force to the Covenant:

"The expenses of the League shall be borne by the Members of the League in the proportion decided by the Assembly."

ARTICLE 10.

The Members of the League undertake to respect and preserve as against external aggression the territorial integrity and existing political independence of all Members of the League. In case of any such aggression or in case of any threat or danger of such aggression, the Council shall advise upon the means by which this obligation shall be fulfilled.

ARTICLE 11.

Any war or threat of war, whether immediately affecting any of the Members of the League or not, is hereby declared a matter of concern to the whole League, and the League shall take any action that may be deemed wise and effectual to safeguard the peace of nations. In case any such emergency should arise, the Secretary-General shall, on the request of any Member of the League, forthwith summon a meeting of the Council.

It is also declared to be the friendly right of each Member of the League to bring to the attention of the Assembly or of the Council any circumstance whatever affecting international relations which threatens to disturb international peace or the good understanding between nations upon which peace depends.

ARTICLE 12.

The Members of the League agree that, if there should arise between them any dispute likely to lead to a rupture, they will submit the matter either to arbitration or to inquiry by the Council, and they agree in no case to resort to war until three months after the award by the arbitrators or the report by the Council.

In any case under this Article the award of the arbitrators shall be made within a reasonable time, and the report of the Council shall be made within six months after the submission of the dispute.[4]

ARTICLE 13.

The Members of the League agree that, whenever any dispute shall arise between them which they recognize to be suitable for submission to arbitration and which can not be satisfactorily settled by diplomacy, they will submit the whole subject-matter to arbitration.

Disputes as to the interpretation of a treaty, as to any question of international law, as to the existence of any fact which if established would constitute a breach of any international obligation, or as to the extent and nature of the reparation to be made for any such breach, are declared to be among those which are generally suitable for submission to arbitration.

For the consideration of any such dispute the court of arbitration to which the case is referred shall be the court agreed on by the parties to the dispute or stipulated in any convention existing between them.

The Members of the League agree that they will carry out in full good faith any award that may be rendered and that they will not resort to war against a Member

[4] The Assembly voted in favor of the following amendments in 1921, and the Members are now deciding upon ratification:

"The Members of the League agree that, if there should arise between them any dispute likely to lead to a rupture they will submit the matter either to arbitration *or judicial settlement* or to inquiry by the Council and they agree in no case to resort to war until three months after the award by the arbitrators *or the judicial decision,* or the report by the Council.

"In any case under this Article, the award of the arbitrators *or the judicial decision* shall be made within a reasonable time, and the report of the Council shall be made within six months after the submission of the dispute."

of the League which complies therewith. In the event of any failure to carry out such an award, the Council shall propose what steps should be taken to give effect thereto.[5]

ARTICLE 14.

The Council shall formulate and submit to the Members of the League for adoption plans for the establishment of a Permanent Court of International Justice. The Court shall be competent to hear and determine any dispute of an international character which the parties thereto submit to it. The Court may also give an advisory opinion upon any dispute or question referred to it by the Council or by the Assembly.

ARTICLE 15.

If there should arise between Members of the League any dispute likely to lead to a rupture, which is not submitted to arbitration in accordance with Article 13, the Members of the League agree that they will submit the matter to the Council. Any party to the dispute may effect such submission by giving notice of the existence of the dispute to the Secretary-General, who will make all necessary arrangements for a full investigation and consideration thereof.[6]

For this purpose the parties to the dispute will communicate to the Secretary-General, as promptly as possible, statements of their case, with all the relevant facts and papers, and the Council may forthwith direct the publication thereof.

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[5] The Assembly voted in favor of the following amendments in 1921, and the Members are now deciding upon ratification:

"The Members of the League agree that, whenever any dispute shall arise between them which they recognise to be suitable for submission to arbitration *or judicial settlement,* and which cannot be satisfactorily settled by diplomacy, they will submit the whole subject-matter to arbitration *or judicial settlement.*

"Disputes as to the interpretation of a treaty, as to any question of international law, as to the existence of any fact which, if established, would constitute a breach of any international obligation, or as to the extent and nature of the reparation to be made for any such breach, are declared to be among those which are generally suitable for submission to arbitration *or judicial settlement.*

"For the consideration of any such dispute, the court to which the case is referred shall be the Permanent Court of International Justice, established in accordance with Article 14, or any tribunal agreed on by the parties to the dispute or stipulated in any convention existing between them.

"The Members of the League agree that they will carry out in full good faith any award *or decision* that may be rendered, and that they will not resort to war against a Member of the League which complies therewith. In the event of any failure to carry out such an award *or decision,* the Council shall propose what steps should be taken to give effect thereto."

[6] The Assembly voted in favor of the following amendment in 1921, to be paragraph one, and the Members are now deciding upon its ratification:

"If there should arise between Members of the League any dispute likely to lead to a rupture, which is not submitted to arbitration or judicial settlement *in accordance with Article 13, the Members of the League agree that they will submit the matter to the Council. Any party to the dispute may effect such submission by giving notice of the existence of the dispute to the Secretary-General, who will make all necessary arrangements for a full investigation and consideration thereof."*

The Council shall endeavor to effect a settlement of the dispute and, if such efforts are successful, a statement shall be made public giving such facts and explanations regarding the dispute and the terms of settlement thereof as the Council may deem appropriate.

If the dispute is not thus settled, the Council, either unanimously or by a majority vote, shall make and publish a report containing a statement of the facts of the dispute and the recommendations which are deemed just and proper in regard thereto.

Any Member of the League represented on the Council may make public a statement of the facts of the dispute and of its conclusions regarding the same.

If a report by the Council is unanimously agreed to by the Members thereof other than the Representatives of one or more of the parties to the dispute, the Members of the League agree that they will not go to war with any party to the dispute which complies with the recommendations of the report.

If the Council fails to reach a report which is unanimously agreed to by the members thereof, other than the Representatives of one or more of the parties to the dispute, the Members of the League reserve to themselves the right to take such action as they shall consider necessary for the maintenance of right and justice.

If the dispute between the parties is claimed by one of them, and is found by the Council, to arise out of a matter which by international law is solely within the domestic jurisdiction of that party, the Council shall so report, and shall make no recommendation as to its settlement.

The Council may in any case under this Article refer the dispute to the Assembly. The dispute shall be so referred at the request of either party to the dispute, provided that such request be made within 14 days after the submission of the dispute to the Council.

In any case referred to the Assembly, all the provisions of this Article and of Article 12 relating to the action and powers of the Council shall apply to the action and powers of the Assembly, provided that a report made by the Assembly, if concurred in by the Representatives of those Members of the League represented on the Council and of a majority of the other Members of the League, exclusive in each case of the Representatives of the parties to the dispute, shall have the same force as a report by the Council concurred in by all the members thereof other than the Representatives of one or more of the parties to the dispute.

Article 16.

Should any Member of the League resort to war in disregard of its covenants under Articles 12, 13 or 15, it shall *ipso facto* be deemed to have committed an act of war against all other Members of the League, which hereby undertake immediately to subject it to the severance of all trade or financial relations, the prohibition of all intercourse between their nationals and the nationals of the covenant-breaking State, and the prevention of all financial, commercial or personal intercourse between the nationals of the covenant-breaking State and the nationals of any other State, whether a Member of the League or not.

It shall be the duty of the Council in such case to recommend to the several Governments concerned what effective military, naval or air force the Members of the League shall severally contribute to the armed forces to be used to protect the covenants of the League.

The members of the League agree, further, that they will mutually support one another in the financial and economic measures which are taken under this

Article, in order to minimize the loss and inconvenience resulting from the above measures, and that they will mutually support one another in resisting any special measures aimed at one of their number by the covenant-breaking State, and that they will take the necessary steps to afford passage through their territory to the forces of any of the Members of the League which are co-operating to protect the covenants of the League.

Any Member of the League which has violated any covenant of the League may be declared to be no longer a Member of the League by a vote of the Council concurred in by the Representatives of all the other Members of the League represented thereon.[7]

ARTICLE 17.

In the event of a dispute between a Member of the League and a State which is not a Member of the League, or between States not Members of the League, the State or States not Members of the League shall be invited to accept the obligations of Membership in the League for the purposes of such dispute, upon such conditions as the Council may deem just. If such invitation is accepted, the provisions of Article 12 to 16, inclusive, shall be applied with such modifications as may be deemed necessary by the Council.

Upon such invitation being given, the Council shall immediately institute an inquiry into the circumstances of the dispute and recommend such action as may seem best and most effectual in the circumstances.

If a State so invited shall refuse to accept the obligations of Membership in the League for the purposes of such dispute, and shall resort to war against a Member of the League, the provisions of Article 16 shall be applicable as against the State taking such action.

If both parties to the dispute, when so invited, refuse to accept the obligations of Membership in the League for the purposes of such dispute, the Council may take such measures and make such recommendations as will prevent hostilities and will result in the settlement of the dispute.

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[7] The Assembly voted in favor of the following amendments to Art. 16, to replace paragraph one, in 1921, and the Members are now deciding upon their ratification:

"Should any Member of the League resort to war in disregard of its covenants under Articles 12, 13 or 15, it shall *ipso facto* be deemed to have committed an act of war against all other Members of the League, *which hereby undertake immediately to subject it to the severance of all trade or financial relations, the prohibition of all intercourse between persons residing in their territory and persons residing in the territory of the Covenant-breaking State, and the prevention of all financial, commercial or personal intercourse between persons residing in the territory of the Covenant-breaking State and persons residing in the territory of any other State, whether a Member of the League or not.*

"It is for the Council to give an opinion whether or not a breach of the Covenant has taken place. In deliberations on this question in the Council, the votes of Members of the League alleged to have resorted to war and of Members against whom such action was directed shall not be counted.

"The Council will notify to all Members of the League the date which it recommends for the application of the economic pressure under this Article.

"Nevertheless, the Council may, in the case of particular Members, postpone the coming into force of any of these measures for a specified period where it is satisfied that such a postponement will facilitate the attainment of the object of the measures referred to in the preceding paragraph, or that it is necessary in order to minimize the loss and inconvenience which will be caused to such Members."

ARTICLE 18.

Every treaty or international engagement entered into hereafter by any Member of the League shall be forthwith registered with the Secretariat and shall as soon as possible be published by it. No such treaty or international engagement shall be binding until so registered.

ARTICLE 19.

The Assembly may from time to time advise the reconsideration by Members of the League of treaties which have become inapplicable and the consideration of international conditions whose continuance might endanger the peace of the world.

ARTICLE 20.

The Members of the League severally agree that this Covenant is accepted as abrogating all obligations or understandings *inter se* which are inconsistent with the terms thereof, and solemnly undertake that they will not hereafter enter into any engagements inconsistent with the terms thereof.

In case any Member of the League shall, before becoming a Member of the League, have undertaken any obligation inconsistent with the terms of this Covenant, it shall be the duty of such Member to take immediate steps to procure its release from such obligations.

ARTICLE 21.

Nothing in this Covenant shall be deemed to affect the validity of international engagements, such as treaties of arbitration or regional understandings like the Monroe doctrine, for securing the maintenance of peace.

ARTICLE 22.

To those colonies and territories which as a consequence of the late war have ceased to be under the sovereignty of the States which formerly governed them and which are inhabited by peoples not yet able to stand by themselves under the strenuous conditions of the modern world, there should be applied the principle that the well being and development of such peoples form a sacred trust of civilization and that securities for the performance of this trust should be embodied in this Covenant.

The best method of giving practical effect to this principle is that the tutelage of such peoples should be intrusted to advanced nations who by reason of their resources, their experience or their geographical position can best undertake this responsibility, and who are willing to accept it, and that this tutelage should be exercised by them as Mandatories on behalf of the League.

The character of the mandate must differ according to the stage of the development of the people, the geographical situation of the territory, its economic conditions and other similar circumstances.

Certain communities formerly belonging to the Turkish Empire have reached a stage of development where their existence as independent nations can be provisionally recognized subject to the rendering of administrative advice and assistance by a Mandatory until such time as they are able to stand alone. The wishes of these communities must be a principal consideration in the selection of the Mandatory.

Other peoples, especially those of Central Africa, are at such a stage that the Mandatory must be responsible for the administration of the territory under conditions which will guarantee freedom of conscience and religion, subject only to the maintenance of public order and morals, the prohibition of abuses such as the slave trade, the arms traffic and the liquor traffic, and the prevention of the

establishment of fortifications or military and naval bases and of military training of the natives for other than police purposes and the defense of territory, and will also secure equal opportunities for the trade and commerce of other Members of the League.

There are territories, such as Southwest Africa and certain of the South Pacific islands, which, owing to the sparseness of their population or their small size, or their remoteness from the centers of civilization, or their geographical contiguity to the territory of the Mandatory, and other circumstances, can be best administered under the laws of the Mandatory as integral portions of its territory, subject to the safeguards above mentioned in the interests of the indigenous population.

In every case of mandate, the Mandatory shall render to the Council an annual report in reference to the territory committed to its charge.

The degree of authority, control, or administration to be exercised by the Mandatory shall, if not previously agreed upon by the Members of the League, be explicitly defined in each case by the Council.

A permanent Commission shall be constituted to receive and examine the annual reports of the Mandatories, and to advise the Council on all matters relating to the observance of the mandates.

ARTICLE 23.

Subject to and in accordance with the provisions of international conventions existing or hereafter to be agreed upon, the Members of the League:

(*a*) will endeavor to secure and maintain fair and humane conditions of labor for men, women, and children, both in their own countries and in all countries to which their commercial and industrial relations extend, and for that purpose will establish and maintain the necessary international organizations;

(*b*) undertake to secure just treatment of the native inhabitants of territories under their control;

(*c*) will intrust the League with the general supervision over the execution of agreements with regard to the traffic in women and children and the traffic in opium and other dangerous drugs;

(*d*) will intrust the League with the general supervision of the trade in arms and ammunition with the countries in which the control of this traffic is necessary in the common interest;

(*e*) will make provision to secure and maintain freedom of communications and of transit and equitable treatment for the commerce of all Members of the League. In this connection, the special necessities of the regions devastated during the war of 1914-1918 shall be borne in mind;

(*f*) will endeavor to take steps in matters of international concern for the prevention and control of disease.

ARTICLE 24.

There shall be placed under the direction of the League all international bureaus already established by general treaties, if the parties to such treaties consent. All such international bureaus and all commissions for the regulation of matters of international interest hereafter constituted shall be placed under the direction of the League.

In all matters of international interest which are regulated by general conventions but which are not placed under the control of international bureaus or commissions, the Secretariat of the League shall, subject to the consent of the Council and if desired by the parties, collect and distribute all relevant information and shall render any other assistance which may be necessary or desirable.

The Council may include as part of the expenses of the Secretariat the expenses of any bureau or commission which is placed under the direction of the League.

ARTICLE 25.

The Members of the League agree to encourage and promote the establishment and co-operation of duly authorized voluntary national Red Cross organizations having as purposes the improvement of health, the prevention of disease and the mitigation of suffering throughout the world.

ARTICLE 26.

Amendments to this Covenant will take effect when ratified by the Members of the League whose Representatives compose the Council and by a majority of the Members of the League whose Representatives compose the Assembly.

No such amendment shall bind any Member of the League which signifies its dissent therefrom, but in that case it shall cease to be a Member of the League.[8]

ANNEX

I. ORIGINAL MEMBERS OF THE LEAGUE OF NATIONS, SIGNATORIES OF THE TREATY OF PEACE.

United States of America
Belgium
Bolivia
Brazil
British Empire
  Canada
  Australia
  South Africa
  New Zealand
  India
China
Cuba
Ecuador
France
Greece
Guatemala
Haiti
Hedjaz
Honduras
Italy
Japan
Liberia
Nicaragua
Panama
Peru
Poland
Portugal
Rumania
Serb-Croat-Slovene State
Siam
Czecho-Slovakia
Uruguay

[8] The Assembly voted in favor of the following amendment to replace Art. 26, in 1921, and the Members are now deciding upon its ratification:

"Amendments to the present Covenant the text of which shall have been voted by the Assembly on a three-fourths majority, in which there shall be included the votes of all the Members of the Council represented at the meeting, will take effect when ratified by the Members of the League whose Representatives composed the Council when the vote was taken and by the majority of those whose Representatives form the Assembly.

"If the required number of ratifications shall not have been obtained within twenty-two months after the vote of the Assembly, the proposed amendment shall remain without effect.

"The Secretary-General shall inform the Members of the taking effect of an amendment.

"Any Member of the League which has not at that time ratified the amendment is free to notify the Secretary-General within a year of its refusal to accept it, but in that case it shall cease to be a Member of the League."

ANNEX I

States Invited to Accede to the Covenant

Argentine Republic
Chile
Colombia
Denmark
Netherlands
Norway
Paraguay
Persia
Salvador
Spain
Sweden
Switzerland
Venezuela

II. First Secretary-General of the League of Nations.

The Honorable Sir James Eric Drummond, K. C. M. G., C. B.

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